CHAPTER VI

SOCIAL LEGISLATION AND CHANGING STATUS OF TAMIL WOMEN

The Background:

The Aryan culture was dominant in Tamil Nadu in the 18th and 19th centuries when the British had established their power in South India. The indigenous Dravidian customs and manners were to be found among the several tribes in the hilly tracts of the country and among the Tamil castes like the vellalas and other village communities. The Tamil Society was practically organised and the socialization was such that the indigenous people had adopted Brahminical religious and Social customs.

The degradation of women in the modern Indian society has been the outcome of the evolution to which they have been subjected to after the Vedic period which ranged from c.400 B.C. to 100 B.C. A study of the condition of women from their childhood will disclose the position to which the sastras have treated them since the Past ages. As Altekar puts it, "The history of the position and status of women is of vital importance to the student of Hindu civilisation. The subject is a very wide and comprehensive one, for we shall have to ascertain not only the general estimate formed

about women in different periods of our long history, but its actual effects also upon the diverse spheres of their activities during the different stages of their life"².

Compared to the women of the 19th century, the women of the Vedic period enjoyed a high position in society. In the Vedic Age, girls were married at a mature age and had freedom of choice of their husbands. "A wife was the husband's companion in weal and woe, mistress of the household and Partner in all his activities-temporal or spiritual. Women were free to attend and visit public assemblies and social gatherings. They were active participants in agriculture and co-operated with men in the manufacture of bows, arrows, cloth and other articles of public utility"³.

In the Vedic period women were never looked down upon as mere objects of lust. Rig-veda testifies that the wife participated in the sacrificial offerings of her husband. Intellectually also women of the Vedic Age were socially advanced. "Though female education was not compulsory, girls

³ Pratima Asthana, Women's Movement in India, (Delhi, 1974), PP.1-2.
were allowed to acquire knowledge on literature and fine arts. Woman was held to be one with her husband, not only physically but spiritually as well. The husband attended sacrifices generally accompanied by his wife. "In the Brahman literature, the presence of wife has been made indispensable for the accomplishment of a sacrifice". The vedic women had equal rights with men, uttered Vedic mantras, performed Vedic rites and rituals undertook Vedic vows and did whatever was necessary for the proper performance of yogayagna like a son.

The vedic period closed C.100 B.C., and in the sutra and Epic periods that followed (C-600 B.C. to 200 B.C.), changes were visible in the status of women in Society. Sita in the epic Ramayana represents ideal womanhood of Tratayuga. She is self-dependent, self-poised; she is soft as a flower yet equally strong as a thunder bolt, devoted to her husband to the very core of her being, yet unflinching in her self respect and dignity; peerless and unrivalled in the whole history of Indian thought. Degradation of women had started in the Mahabharata period where Polygamy and


5. Indira., Status of Women in Ancient India,(Lahore, 1940,) P.148.

polyandray were common. Women had lost security in society as is evident by the attempted humiliation of Draupadi in Duryodana's court, and sexy Keechaka's attempt to dishonour her in the king Virata's household. However, in the family, sons and daughters were treated alike. Marriage was not compulsory for women, and child marriage was absolutely unknown. The maidens had the right to select their husbands in regard to which kings used to arrange Swayam-Vara ceremony to which princes were invited, so that the princess could select one among them for her husband.7

Next, during the dharma sutra period, when Kautilya (C.300 B.C-100 AD), Manu (C.200 B.C-100 A.D) and others wrote their doctrines on dharma, the position of woman was reduced in society and the several social and religious rights she enjoyed in the previous ages disappeared.8 Manu, while adhering to the doctrine of women's inseparability with men in religious matters, assigned an inferior place to women. His Dharma-sutras forbade girls and married women from offering agni-hotra, for by offering burnt oblations, they would sink into hell.9 Women became subordinate to man


9. Ibid.,
in religious offerings and ceremonies. Even recitation of Vedic hymns was forbidden in the case of women. Yajnavalkya also was of the opinion that women must carry out religious rites in silence, while marriage ceremony only should be conducted with the recitation of the sacred texts.  

In the 5th century B.C., Buddhism gave a respectable position to women where social activities were concerned. It did not consider woman as evil or as one responsible for mere sensuality; yet she might be an abstraction in the path of deliverance. A girl during the Buddhist period was able to remain unmarried and become a bhikkuni. Being the weaker sex, she was considered as inferior to man in the monastery as well as in society. During the 6th century B.C., women attained spiritual heights. Many joined the ascetic order. Jain nuns were learned and composed Jain works.

During the puranic and smriti period (C.100 A.D - 900 A.D) position of Indian women deteriorated. Their position was not the same as in the Vedic age. Their social and religious rights were curtailed. Freedom, education and


equality were denied to them. Woman was considered abala or the weaker sex; she was taken in marriage for procreation only. Cruel and unjust customs "like Gouri-dana or child marriage, Sati-dana or widow burning"\textsuperscript{13}, took strong roots in society.

**Tamil women : 18th and 19th centuries :**

Tamils in the medieval and early modern period served kings and feudal lords; as such they were a martial race. Women were modest and brave. According to an old poem, a woman, when asked as to where her son was, replied: "I know not where my son is; but he will appear, without doubt, in some battle field for this (pointing to her abdomen) is the cave that gave birth to that tiger".\textsuperscript{14} Before the Aryan influence curtailed their liberty, the Tamilians were free, and hardy, not enslaved by seeramental notions of marriage, Sati, Child marriage, Purdha and other evil institutions of the Aryans. The place of woman as life partner of man is well mirrored in Tamil literature, while in the domain of art, the feminine beauty gripped the attention of artists, as can be seen in the temple sculptures of South India. In the Tamil country, woman held a respectable place in the

\textsuperscript{13} Thomas.P., Indian Women through the Ages. [New York, 1964], P.31.

family and in the matriarchal families she was all important. Women were known for their chastity and were devoted to their husbands: It is told that Kannagi, the Pandyan Queen lost her life, the moment she found her Lord dead. In Saivism, the principal religion of the Tamils, god is represented in the inseparable masculine and feminine form: "god is Tayu - manavar - He who became the mother too" He is Ardhanarishvara with half female form. He is Ammai-yappa, both the Divine Mother and Divine Father. This ideal concept of god has given importance to women in Tamil Nadu.

In the 18th and the 19th centuries, two separate standards in Tamil society existed for men and women. Women had an inferior place and were burdened with evil social customs. Tamil Society was built upon concepts like pre-puberty marriage for girls, tonsure for Brahmin widows and dedication of young girls to temples. It was not an uncommon sight to find "little girls at play wearing the tali, a necklace that symbolises marriage. A man who could not get his daughter married off before puberty, it was believed, was a sinful man".


There were more child widows than child brides during these two centuries. Education was denied to girls. Those who dared to educate their daughters without getting them married were made outcastes in the Brahmin Community.\textsuperscript{18} Very few among women who had higher studies were Anglo-Indian girls and a few non-Brahmin and Christian converts. Girls of the Isai vellala families were recruited to the service of temple gods and ended up by becoming prostitutes. In fact, every custom affecting Tamil women had the blessings of religion. Any attempt to change the evil customs relating to them was considered as anti-religious.

The image and role of a woman varied according to the caste and religion to which she belonged. "Often, it has been found that the higher the status of the caste group, lower the status of women in it".\textsuperscript{19} In the Brahmin Caste, which is regarded as the highest class, women suffered great disabilities such as restricted marriage within their sub-caste group, early marriage, dowry system, prohibition of widow remarriage and ill treatment by the in-laws. On the other hand women belonging to lower classes, who worked in the fields, had better status though considered as inferior

\textsuperscript{18} New India., Madras, 7th April, 1917.

\textsuperscript{19} Sushilamehta , Revalution and the Status of women in India,(New Delhi, 1982), PP.10-11.
to men. Among the lower classes, women had better status in their own clan. "They have more freedom to move out of their homes. They enjoy better status and role in their limited world. Often these women are boisterous, talkative and gay. They could decorate themselves to their hearts' content and even smoke! No one would object to it". Muslim women were behind purdha. Polygamy was common among Muslims and rich people and land lords in Tamil Nadu.

The pativrata concept that a wife should be devoted to her husband had moulded the character of the Indian women. This concept created the image of a woman as self-sacrificing, meekly serving and gladly suffering hardships for the sake of her husband and for uplifting the family prestige.

Tamil Civilisation is primarily of the Dravidian type. Men and women enjoyed equal rights and privileges, and there was the same moral standard for both the sexes. Dravidian culture was gradually eclipsed by that of the Aryan. "The once free dignified woman of the Tamil land was, in the name of blessed religion, degraded to a chattel. The priests became the keepers of her conscience and dictated to her

20. Ibid., P.11.
what they in their own interest thought was good enough for her. She lost the opportunities of education; she lost freedom of thought; and she lost freedom of choice even in her own marriage. She was deceived to believe in false standards of morality which but reduced her to a serf duty-bound to serve her masterman."²².

Generally Kalaviyal and Karpiyal were two forms of marriage prevalent among the ancient Tamils. The first was marriage in secrecy or love marriage akin to the Gandharva marriage of the Aryans. The Second, Karpiyal was the marriage arranged by parents.²³ During the period of the Tamil Epics (2nd Century A. D), the rites of marriage were changed and Aryan system of marriage dominated Tamil Society. Girls of twelve were married to boys of Sixteen. However among the aboriginal tribes strange customs of marriage prevailed providing scope even to free love-affairs after marriage; Among the Koyas Marriage by elopement is recognised. The girl and the youth are permitted to marry after a successful elopement and staying together for three


days. Divorce is common, but abduction and rape are punished. There are instances of widows observing strict widow-hood.

Part of the Andhra country and South Kanara belonged to the Madras Presidency under the British. Among the Konda Reddy caste Post-puberty marriages are common. "As a rule widow re-marriage is not allowed, but there is no objection to any one having a widow as a keep. When a widow or a reduced woman is kept by a man, she functions as his wife for all purposes and her children are recognised as legitimate.

Among the Bagatas marriages are after or before puberty. The custom of Menarikam compelling a man to marry his maternal uncle's daughter is observed. Divorce and widow-marriage are allowed. Among the Dombas, a widow usually marries the younger brother of her husband.

Marriage by elopement is common among Paniyas, a jungle tribe of Malabar. "The Paniyas are extremely jealous in sexual matters; the man with not tolerate his wife speaking

26. Ibid., p. 88
with another, and anxiety about the loss of the wife is a common worry to most Paniya husbands.27"

Annamalai (Elephant Hill) lies south of Pollachi and Udamalpet taluks of Coimbatore district. Kadars, a forest tribe, live in the jungles of Anamalai. Marriage among them is no more free. In case of disobedience on her part or for immoral conduct of a husband or wife, they are expelled from the hills. Polygamy is common in the tribe.28

The Dravidian society was not as rigid as the Brahmin society in the 18th and 20th century Tamil Nadu. The Dravidians allowed cross-cousin marriages. This custom allowed a man to marry the daughter of either his maternal uncle or his paternal aunt; his sister could marry the son of her maternal uncle or paternal aunt. There were evil customs also in certain Dravidian tribes: Among the Kammavans a boy was married to a woman old enough to be his mother. His father begot children for him, while the boy was considered as the legal father.29 Kongu Vellalas arrange marriages for their daughters very late after puberty and did not allow divorce and remarriage. Similar marriage custom is found among Agamudayars (Thevars) of Madurai.

27. Ibid., 98-99.
29. OMelly., Indian Castes & Customs, [Delhi, 1974], P.1.
district\textsuperscript{30}. The kallars allowed divorces and widows to remarry.

Reddiars belonged to an advanced community in Tamil Nadu and had adopted Brahminical marriage customs. Divorce and widow remarriage were prohibited in their community. Most of the Dravidian castes had adopted the Aryan rituals regard to marriage so much so the lot of the women, with dreaded customs of child marriage and widowhood, was miserable. Several castes like Arasa Pillais who once practised divorce, remarriage and widow remarriage gave them and had accepted the Vedic system of marriage as it existed in the 17th Century and onwards\textsuperscript{31}.

The Vedic freedom of women in Society, their choice of husband, and the respect they held in the house hold gradually vanished by the middle Ages as a result of the customs and manners the invaders brought into India: The Muslim rulers set the way for the courtiers and the well to do land lords for polygamy\textsuperscript{32}. As a result, the Hindu king had the harem where lived hundreds of women as his wives.

\begin{itemize}
\item[29.] Omelly., \textit{Indian Castes and Customs}, (Delhi, 1974), P.1
\item[31.] Ibid., P.20.
\item[32.] Sushila Mehta., \textit{Op cit}, P. 12
\end{itemize}
While the custom of Polygamy also penetrated into the Society, the early Muslim marriage includes victims of Kidnap and rape. The Purdha became common and the women folk were hidden from the conquering enemies. Later, the purdah system became a fashion among the rich. In such parts of India as Rajastan, Gujarat and Madhya Pradesh Purdha became a social customs, which in former foes. The birth of a female child became a burden to parents, since the Dharmasastra ordained that the girls should be married at the age of eight, failing which the parents were ostracised from Society. Marriage meant dowry, which told severaly on poor families. As a result, the female child was unwanted in the family and infanticide of the female child became common throughout the country. Burning of widows on the funeral pyre of the husband, became a dreaded practice. For the woman who survived the deceased husband, social conditions were severe. No remarriage was allowed to her. For married women, though the shastras had provided divorce in certain cases, those provisions had ceased and the wife was devoted to her husband inspite of his adultery and bad treatment.

Prositution was another disgrace in regard to women: Prostitution as a profession has existed from ancient times all over the world. With the Cholas building temples in South India, the practice of dedicating girls to the temples to serve the gods was introduced in Tamil Nadu. These Devadasis as they were called became victims for the carnal pleasures of the temple priests and practically led the life of Prostitutes.

With the introduction of western education, educated people like Raja Ram mohan Roy saw the social evils to which the Indian women had fallen. It became the indafatigable efforts of the reformers to awaken the conscience of society against the social wrongs on women and induce the British government to bring in legislation to eradicate them. From 1829 onwards till the British left India in 1947 a series of laws were passed to ameliorate the condition of Indian women regarding marriage and ensure their rights over property, divorce, remarriage, adoption and free them from other social evils.

Work of the Social Reformers:

The Madras Presidency under the British contained the present areas of Tamil Nadu, parts of southern Andhra

Pradesh including Chittore and South Kanara districts. There were reforms movements in the entire Madras Presidency and the Press in the Kannada, Telugu and Tamil areas freely ventilated their feelings regarding social reform legislation of the Government. Moreover, as the important social legislation touching the religion and Personal Law of the Muslims and Hindus came from the central legislature, and were generally applicable to the whole of British India, criticism freely emerged both in favour of and against legislation. The social reform movements in different parts of India were also responsible considerably for social legislation in the changing Indian society.

The whole question of social change in Tamil Nadu revolved round the wider social phenomenon of the conflict between tradition and modernity. Everyone of the major social reform initiated by the British struck directly or indirectly on the Hindu social, religious, complex of faith and behaviour. In the view of the orthodox people, the Acts introduced by the British such as the abolition of sati, Age of consent Act, Widow Remarriage Act, and Hindu wills Act were extremely revolutionary. But the social reformers and their indefatigable efforts to influence the

38. The Parayan., Madras, 26th October 1895.
Government for social legislation did not go in vain. The cradle of social reform movements was Bengal, where the British had established their capital, and where social reformers like Raja Ram Mohan Roy had contact with Governor-General William Bentinck who had the humanitarian outlook and the desire to reform Hindu Society.

The Social reform activities in Bengal strongly influenced the educated elite in Tamil Nadu. Raja Ram Mohan Roy, Keshab Chandrasen, Swami Dayananda Saraswati and other reformers were determined to eradicate the social evils and create a new healthy Hindu Society. Raja Ram Mohan Roy wished to reform Hinduism and not reject it. "As the social evils in Hindu society were emanations from the degenerate religious life of the people", he considered that it stood to reason that any attempt at regeneration or reformation necessarily would mean eradicating the prevalent abuses in Hinduism. William Bentinck was influenced by Roy's propaganda against the horrible practice of sati and accordingly passed Regulation XVIII of 1829 which made the burning of widows (sati) culpable homicide, punishable with fine or imprisonment or both.

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41. Ibid., P.24.
Keshab Chandra Sen was another social reformer of the 19th century who concentrated his attention on education of children, women and working men. He aimed at establishing a castless society and encouraged inter-caste marriages through the Brahmo Samaj. Dayananda Saraswati founded the Arya Samaj and purified the Hindu religion by fighting against its superstitious beliefs and evil social practices. Keshab Chandra Sen came to remove the gigantic evil of caste system, promote female education, and form associations to give direction to reformist activities. Influenced by Keshab Chandra Sen's lectures, two law students of Madras organised the Veda Samaj on the lines of Sen's Brahmo Samaj of Bengal to fight against Brahmin and non-Brahmin prejudices prevalent in society then, and to encourage female education and widow re-marriage.

In a recent publication, the condition of women who took to learning in the 19th century Calcutta is vividly described by Malvika Karlekar. When there was belief that widowhood befall a girl who took to booklearning, and even primary schooling for females was frowned upon, the first women who took the B.A., degree were Kadambini and

44. Malvika Karlekar., *Voices from within*, (Early Persona Narratives of Bengali women), (Bangalore, 1991), P.10.
Chandramukhi. Though Kadambini became a doctor she was accused publicly in a newspaper of being unchaste\(^{45}\). Reading was considered as "unwomanly behaviour". Rassundari, a woman of the nineteenth century with twelve children at the age of forty one, learned the alphabet hiding a page from the *Chaitanya Bhagavata* and deciphering the letters with the help of the alphabets that her son was learning"\(^{46}\).

Similar conditions prevailed in Tamil Nadu in the 19th century when orthodoxy considered education unnecessary for girls who were to become housewives at an early age being subjected to pre-puberty marriage.

The Theosophical society founded in Madras in 1882 was a spiritual reform society\(^{47}\). But, while it stood for Hindu religion, upliftment of the depressed classes, and female education, it became also a political party. Annie Besant as the head of the society and as a social reformer considered it her duty to remove social evils prevalent in the Tamil society such as child marriage, illiteracy among women, the Hindu custom of banning sea-voyage, foreign travel and inter-caste dining.


\(^{46}\) Ibid., P.4.

Among the social reformers in Tamil Nadu are Veeresalingam Pantalu, R. Raghunatha Rao, Chentsal Rao and others. Veeresalingam started the Prathana samaj and stood for social reforms opposing post-puberty marriages and encouraging inter-marriage among different castes. The rigidity of the castes in Tamil Nadu was such that inter-caste dining was forbidden. Veeresalingam stood for inter-dining and for a casteless society. He stood also for widow-remarriage. He started the Widow Marriage Association in 1884, and was elected President of the social Reform society in Madras. He was hailed as the Vidyasagar of the South. He stood for women's upliftment and their education. He dedicated his life to the upliftment of women, especially widows. His activities were not limited to social reforms alone, but were extended to other fields also. In 1884 he established a journal Vivekavaradhini for propagating his reforms in the Social and literary field. He led an untiring crusade against caste-system, child marriage and institution alisation of prostitution.

49. Ibid., P.51.
P. Chentsal Rao became the Secretary of the Madras Hindu Widow Marriage Association. He was not for social reform legislation, where Hindu personal law was concerned. B.M. Malabari introduced the Age of Consent Bill, Chentsal Rao argued that Social legislation would lead to no beneficial results and might shake the confidence of the people in the neutrality of government in religious matters and create a reaction in favour of the very evil which had to be repressed.\(^51\)

Raghunatha Rao had his own ideas about Social reform: He considered the western-educated class as atheists who despised its own religious and social heritage. He belonged to the traditional school of reformers whose source of inspiration was the shastras. He went to the extent of rejecting the term "reform in preference to what he called the revival of our old rules of conduct."\(^52\) He was ready to support piece-meal legislation, such as the Age of consent bill, provided it conformed to the Shastras.\(^53\) He also published a pamphlet to demonstrate that the Vedas, the

\(^{51}\) Madras Public Proceedings., Vol.2595, Chentsal Rao to Govt of Madras, dated 15th January 1885.

\(^{52}\) Suntharalingam. R., Politics and Nationalist Awakening in South India 1852-1891, (Delhi, 1980), P.89.

\(^{53}\) R. Raghunatha Rao's letter to the Editor Madras Times, 10th January, 1890.
highest authority of the Hindus, weighed on the side of those urging that the Age of consent be raised.

The sincerity of the reformers had been questioned by the orthodox Hindus and pandits who were strongly wedded to the shastric ideologies. P.D. Naidu, writing to the *Calcutta Review* in 1902, has tried to expose that the attempts of the social reformers of his time were only half-hearted and devoid of principles. He stated that a man like Keshab Chandra Sen, known in most parts of the enlightened world as much for his piety as for his extraordinary intellectual powers, acted against his own convictions, broke his own rule about the marriage of girls, and married his daughter to the Maharaja of Cooch Behar, before she was 14 and that Dewan Bahadur Raghnatha Rao of Madras did not act up to his preaching though he supported the Age of Consent Bill.

According to Naidu, but for earnest men like Pandit Vidyasagar and Veeresalingam Pantulu, "there are tens and hundreds who swell the cry of Reform for the sake of fashion or notoriety".

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56. Ibid., 284.
In 1889 Swadesamitran, leading paper in Madras, wrote that unless the people tried to effect reforms in their social customs and habits, they can never hope to be benefitted by the Political rights for which they were agitating, and in order to carry out reforms in such matters as infant marriage, Prohibition, sea-voyage among Hindus and the like, there should be formed an association to which the heads of various mutts, the trustees of temples, the Pandits and high-priests should be members. This proposal in its very nature would have been fruitless in as much as the association contained orthodox people as its members.

Social Reforms; Women's Organisation:

Women's movements have played an important role in respect of reforms relating to women in India. Bengal was the cradle of early reforms where educated men with modern outlook stood against social evils to which women were subjected to. The status of women became the subject of many reform movements such as the Brahma Samaj and the Arya Samaj. "The problems of women with which the leaders of these movements were concerned included sati, widow remarriage, divorce, female education, Purdah, Polygamy and dowry."

57. Swadesamitran., 2nd October, 1889.
58. Rao.M.S.A. (Ed)., Social Movements in India, (New Delhi, 1979), P.XXIX
The egalitarian ideologies among Indian women. Several women's associations came into existence both at the regional and national levels. The ideology of the women's movements in the pre-independence period was far from radical. It was blended with Gandhiji's belief in non-violence; it was an ideology which appealed to the middle class, while still it involved the women of the lower classes in the political awakening.  

The earliest reformers who championed the cause of women were educated men like Raja Ram Mohan Roy in Bengal and Veeresalingam Pantalu, Raghunatha Rao, Chentsal Rao and others. The "Hindu Association" started in Madras in 1903 had for its aim the dissemination of correct Hindu ideals among the people, education of Hindu girls, upliftment of backward classes, Marriage reforms, education of widows and upliftment of women were in progress, Nataji Subash Chandra Bose showed that Indian women were heroic enough to challenge the enemy by establishing a women's organisation called the "Mahila Rastriya Sangh" for revolutionary activities in the freedom struggle. In contrast to Bose's

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59. Ibid.,

organisation, for the peaceful struggle against imperialists, the congress women had started an association called the "Nari Satyagraha Samiti". Urmila Devi, Sister of C.R. Das, was its Vice-President\(^\text{61}\).

During the early part of the 20th Century the movement for women's emancipation received impetus due to the leadership of prominent women: Annie Besant at Madras had given leadership involving women for social and political rights. Many of the upper class women derived their inspiration from Annie Besant and Margaret Cousins, another European lady, who dominated the Social reform movement. Besant founded the "Indian Association" in 1917. In the same year a women's delegation led by her met the Viceroy demanding voting rights for women\(^\text{62}\).

At Kanchipuram Parvati Devi the Head Ministress of the Hindu, girls school, founded the "Kanchi Mahila Parishad" to equip the ladies of the town with general information and create public opinion among them regarding matters of national importance. In 1926 Margaret Cousins founded the

\(^{61}\) Ibid.,

"All India Women's Conference" which demanded in respect of girls the raising of marriageable age, education reforms, and voting rights for women, and abolition of Devadasi system. The women's organisations in the Madras Presidency stood for the social liberty of women.

In the Madras Presidency, women's organisations and conferences increased rapidly after the first decade of the 20th Century. They served as the most effective instruments to bring about public awakening. All these organisations were started by educated women. These organisations cautioned society about existing evils and also possible drifting towards Christianity, western institutions and manners. These associations were also responsible for starting news papers and journals to discuss problems pertaining to women, their education and upliftment. One such daily was "Stri Dharma", started by Margaret Cousins, and for which Dr. Muthulakshmi Reddy, the first woman legislator in Madras legislative Council, was editor in later times.

65. The Hindu Nesan., Madras, 18th December, 1912.
Desirability or otherwise of social Reforms:

Legislative Debates:

It has been questioned whether legislation is the proper remedy for social evils of domestic and social concern, especially those involving socio-religious customs. Some believe that for such evils in large communities, remedy should be left to propaganda appealing to the good sense of the communities concerned. "The laws of Sati and Widow remarriage, the removal of the ban on inheritance by converts and the law of civil marriage are some of the instances in which there has been legislation and in all these cases the legislation has trenched on custom, and religious injunctions. The first was undertaken on grounds of humanity and the others in furtherance of social justice. 66 Legislature under the British has interfered with the personal law of the Hindus and Muslims from time to time. However, it is seen that in every civilised country legislation has been used as a remedy to remove social injustice and other social evils. 67

67. Ibid.,
When the necessity for social reforms legislation was discussed, it was held by the British government that the Queen's pledge to the Indian people that there would be no interference with personal law would not be violated where serious social evils were concerned. The Queen's proclamation declared, in framing and administering laws, due regard be paid to ancient rites, usages and customs of India. Hence it was held that the Queen's proclamation did not mean absolute non-interference when, during protection to young girls by raising the consent age from 10 to 12. 68 Lord Lansdowne's statement deserves attention in this regard: "I will venture to say that, in the eyes of every reasonable man and woman, the pledges contained in the Queen's Proclamation must be read with two-fold reservation, upon which the government has always acted, and which was not specified in the letter of the contract, simply because it has always been acted upon and was perfectly obvious and well understood". 69 The first of these reservations is this, that all cases where demands preferred in the name of religion would lead to practices inconsistent with individual safety and the public peace, and condemned by every system of law and morality in the world, it is

68. Mahajan.V.D. Modern Indian History from 1707 - Present Day, (Delhi, 1988), P.219.
69. Ibid., P.220.
religion, and not morality which must give way. Now the Act (Age of Consent), far from absolutely precluding the Government of India from dealing with matters affecting religion, expressly contemplates the possibility of such legislation becoming necessary, although it safeguards it from irresponsible initiation. The law provided also that with the previous or religious rites and usages of any class in India could be introduced, not only in the Imperial Council but in the Provincial Councils also. It has been the general principle of the legislature that private Bills affecting religion and custom or subjects relating to personal law are introduced by the elected members of the Legislative Assembly both in the Imperial and Provincial Councils and after a debate are passed into Acts. It has been the practice of the Indian Legislature to confine its attention to secular matters and not to concern itself with religious affairs. Even where a custom is stated to be based on religion, the legislature deals with it, not with a view to change a religious practice but merely because civil

70. RACC: 1928-29, P.103.

71. Indian Councils Act: 1861, Section 19; Government of India Act of 1919, Section 67, Clause 2.

72. Ibid.,
rights are involved in such practices and the competence of the legislature to deal with such matters cannot be questioned on the ground of its heterogeneous character.  

The Committee on the Age of Consent considered that social legislation may be undertaken when demanded by public opinion or, in exceptional circumstances, it be taken even ahead of public opinion. The Committee also submitted that from whichever point of view the question of legislation as regards Marriage and Consent be looked at the present enquiry shows that there are circumstances which would justify such legislation.

In the debates on the Special Marriage (Amendment) Bill on the floor of the Imperial Legislative Assembly, members have expressed their view in favour of or against legislation on the subject: V.N.Chandavarkar (Bombay) has stated that people should not go into the question whether legislation is against religion or in favour of religion, because that is not the point at issue. "Any legislation which brings society in line with modern ideas should be welcome". It is D.P.Karmarkar's (Bombay) opinion that

74. Ibid., P.171.
however much we may desire to stick to the old things, society has undergone a change and the changing times makes it absolutely necessary to have a change in the law of the land, and therefore social legislation should be direct and effective. Dr. B. Pattabhi Sitaramayya (Madras: general) states that British social legislation being half-hearted did not prove effective on society. The English did not interfere with social customs and manners for various reasons. They had firmly stood against the recognition of changes in social customs. The Sarada Act was a failure on this account and the ineffective clauses it contained in regard to penalties. In all self-governing countries the progress of law and custom would initiate social reform and, where there is a King, the King would set the example and the subjects would follow without questioning it. But, in this country, the King (British King) being an alien and there being no common points in regard to social customs and manners, there was necessarily a wide cleftage between authority and society; in other words, between law and public opinion. Discussing on the ineffectiveness of the Child Marriage Restraint Act of 1929, Kuladhar Chalia states:


"The History of British administration is a sad one and whenever we tried to legislate on social matters, they made it in such a way that it was more ineffective than we wanted it to be. It was always ineffective". 78

Debating on the Hindu Code, Part II (Marriage) Bill, Bhai Parmanand (West Punjab) doubted the necessity of bringing this Bill. According to him, all Marriage Bills which relate to personal law must be preceded by some kind of agitation among the people. Even from the point of view that the Bill concerns mostly to women, Hindu women should have started an agitation to introduce this reform in the Hindu society. Previous legislation show that by agitation Marriage Bills have been introduced in the Legislative Assembly and were passed into Acts. In 1923 Sir Hari Singh Gour, having married a Christian lady, got the Civil Marriage Act passed. The Sikhs who desired a separate law for themselves got the Anand Marriage Act. Similarly, the Arya Samajists who called themselves reformed the Hindus got the Arya Samaj Marriage Validation Act. Hence, Bhai Parmanand argued that since no agitation came for the Hindu Code Bill and since it aimed at "a sort of revolution for the change of the fundamental principles of the Hindu

78. Ibid., P.2315.
Society" there was no necessity to introduce the Bill in the Legislative Assembly.  

Speaking in the Council of State on the resolution regarding the appointment of a Committee for undertaking legislation in respect of Hindu Marriages, Hossain Imam has stated that often legislation originally started mainly for the Hindus turns out in the end to affect all parts of the country. This was the case with Sarda Bill. The original title of the Bill as introduced was the Hindu Marriage Act. But in the Select Committee it was changed and it became applicable to all people. Hence Hossai Imam pointed out that if the committee to be appointed had to "undertake legislation in regard to Hindu Marriages", it should be made clear that by no means it should be made applicable to all sections of people. He was of the opinion that social legislation of a reformist character should originate from the people of the community which is affected and if a majority of the people of that community favour the legislation, other members have a moral obligation to support the resolution. The will of the people who are not to be affected by the legislation should

80. Ibid., PP.1899-1900.
not be used either to throttle the legislation or to give carte blanche to the reformers. 81

Women : Legislation against social evils.

The social injustice which the women of the 18th and 19th century suffered in the name of religion were manifold. Female infanticide, Sati, Dowry and Prostitution were the severest evils in the Hindu society.

Legislation Against Sati Custom

Foreign travellers of the 16th and 17th centuries have mentioned about the horrible custom of sati or widow burning. Albuqurque had prohibited it in Goa in 1510. Amar Das, the sixth Sikh Guru (1552-1574) had condemned it as a practice against the principle of religion. Akbar had saved the daughter-in-law of the Raja of Jodhpur from burning against her will, while his son "Jahangir had forbidden Sati on pain of death for those implicated in the performance". 82 Abbe Dubois has vividly described a Sati performance in Pudupettah village of Tanjore district in 1794. 83

The rite by which the Hindu widow became Sati (wife faithful to husband) had two forms: one was Sahagamana or dying in company with the deceased husband, and the other was Anumarna custom which permitted the widow, when she was pregnant, to die for the sake of her husband after the birth of the child. Sati in Tamil Nadu was practised till as late as the 19th century. When Tirumala Nayaka of Madurai (1625-1659) died, 200 of his wives took to Sati, and when Kelavan Sethupathi, Raja of Ramnad died in 1701 his 47 queens committed Sati. Similarly, on the death of the Raja of Tanjore in 1802, his two wives ended their lives in flames.

The abolition of Sati was the aim of the social reformers and the Government as well, in the 19th century. In 1813 the Madras Magistrate Lushington suggested to the Government of Madras that prohibition of Sati would give universal satisfaction. At Calcutta, the Governor-General Lord Cornwallis was not willing to interfere with the religious and social customs of the Hindus. The object of the Regulations passed during Lord Wellesley's time, namely Regulations of 1812, 1815 and 1817 was to prevent Sati custom. These Regulations made it criminal to compel a woman

85. Permarthalingam.C., "The Sati and its Abolition in Tamil Nadu in the Nineteenth Century" Indian History Congress, New Delhi, 1979, PP.891-892.
to burn herself or to drug or intoxicate her for the purpose. Later, with the direction of the Home Government in London and assisted by Roy, William Bentinck passed the famous Regulation No.XVIII of 1829 which declared Sati illegal and punishable by Courts.\textsuperscript{86} Immediately, the Madras Government passed the Madras Regulation No.I of 1830 prohibiting Sati and declaring it as a crime punishable by the Criminal Code.\textsuperscript{87} The evil practice of widow burning was thus put down by legislation bringing relief to the widows whose lot was miserable in society.

\textbf{Female Infanticide:}

The female child is unwanted in the Hindu family since it is a social and economic burden to the family. The custom of marrying girls in infancy, and the social ostracism the parents had to face, if the girl was not married before the age of eight, or before her puberty, was too severe a social law to bear for the parents. The heavy dowry and the marriage expenses also reduced too the family to utter poverty. Further, where polyandry was common the female sex became too many in number, and to keep down the needless proportion, female infanticide arose.\textsuperscript{88} According to

\textsuperscript{86. Ibid.}

\textsuperscript{87. Ibid.}

A.S. Altekar the custom of infanticide of girls crept into the society during the medieval period when "the daughter was regarded as the root of all misery and the source of unending trouble by the average house-holder". In the Nilgiris of Tamil Nadu, where polyandry was common, the Todas mercilessly threw their female infants in the pens of buffaloes to be trampled by them. The Bengal Government was the first to bring legislation to stop infanticide. Bengal Regulation XXI of 1795 and Regulation of 1802 declared infanticide as murder. In 1803 Madras Government took legislative steps to stop infanticide. Thus innocent female babies were saved from unnatural deaths.

Law Against Dowry:

The marriage which provided the Vedic women the freedom of choice of husband having fallen out of practice long ago, the system of bargaining for bride or bridegroom came into usage when Brahminism revived after the Buddhist Age. Kanya Sulka (Bride Price) and Vara Sulka (Varadakshina or Dowry) were the two evils connected with Hindu marriages which were responsible for the failure of marriages and

90. G.O.No.1328, Public, dated 30th August 1795.
91. G.O.No.1199, Public, dated 30th March 1795.
economic crisis of parents. "Bride Price is customarily prevalent among patrilineal tribes and the middle and lower castes in the non-tribal population. This payment in kind and cash is made to the bride's father" in exchange for the authority over the girl, who goes as the bride. Kanya Sulka was actually the price received by the parents who sold their daughters in the name of marriage. Dharma Sastras had forbidden such marriage transaction declaring that there was no difference in selling a girl and selling cow's mutton. Child-marriages being in practice, old widowers were unable to get brides suitable for their age, and they had to pay a much higher bride price. The bride under the Kanya Sulka custom was badly treated by her in-laws and was practically treated as a slave.

Dowry is the presentation in kind and coin to the parents of the bridegroom or the bridegroom himself in connection with the marriage. It is Varadakshina or ritual presentation to the bridegroom. Dowry system has caused


95. Ibid.,
greater hardship to the poor parents of girls. The incapacity to pay dowry due to poverty of the parents, who were subjected to social ostracism if they did not get their daughters married in time - before reaching the age of eight according to shastras, and the constant harassment of the girl by her in-laws to get their demands from her parents result in many instances in the deaths of girls.

Though the Kanyasulka and Varadakshina customs were rampant in Tamil Nadu, the British administrators did not consider it as a serious social evil requiring legislation, like child marriage and age of consent. An attempt was made in the Bihar assembly to introduce an anti-dowry Bill in 1938. Social reformers like Veeresalingam, Gurzada Appa Rao, Raghunatha Rao and others stood against these evil social customs which degraded the status of Hindu women, while the newspapers of the Madras Presidency published articles and leaders condemned the customs. During C. Rajagopalachariar's ministry in 1938, the Home Minister suggested that the "government may introduce a Bill to abolish it", meaning the dowry system. After the Congress

Ministry under Rajaji, the British did not turn their attention to this subject. It was only in 1961 that the Parliament in Independent India passed the Dowry Prohibition Act of 1961 (Act 28 of 1961) to prohibit giving or taking of dowry.\textsuperscript{100} But the law has proved ineffective while the dowry 'menace' has spread like wild fire all over the country resulting in the deaths of innocent young girls.

**Legislation Against Prostitution:**

Devadasis and Prostitutes were two different classes of harlots in South India during the colonial rule. Devadasis were girls dedicated to the temples for the service of the Gods. The dedication of girls to temple service appears to have been introduced by the Chola Kings who were great builders of temples. The devadasis were servants of the Gods and were unmarried. They were physically exploited by the temple priests and lived the life of prostitutes. The "Secular" devadasis who catered to the lust of the common people were called Ganikas, Dasis and Bhogam.\textsuperscript{101} Prostitution is considered as a great social evil practised on women for sex gratification. There can be no serious and condemnable crime in civilised society than

\textsuperscript{100} Bhatia S.C. (Ed)., Social Audit of Dowry Legislation., (Delhi, 1988), P.69.

prostitution which robs women of their respect, dignity and honour.102

In 1911 the Madras Government proposed to bring legislation prohibiting the adoption of minor girls by prostitutes. The Hindu Law drawn by the Pandits upon the Dharmasastra and used by the British courts rigidly denied the right of adoption of girls by prostitutes. If it is the purpose of a dancing girl (prostitute) to adopt a girl for immoral traffic,103 the adoption is invalid. The Madras Children's Act of 1920 gave protection to minor girls from being forced into immoral traffic. The Madras Hindu Religious Endowment Act of 1929 abolished Devadasi system and after releasing them from the temples, rehabilitating them by giving them inam lands.104 The Madras Suppression of Immoral Traffic Act, 1930 tried to abolish prostitution and give the victims of this trade a dignified position in society.105 In 1931, the Madras Legislature passed the Brothels Act to check prostitution.106 As dedicating girls

103. Venku V Mahalingam, 1911, Madras 393; Kamalakshi Ramaswami, 1919, Madras 127.
106. G.O.No.307,Legal Department, dated 23rd December 1938.
as devadasis to the temples continued inspite of Act of 1929, the Madras Government passed the Devadasi (Prevention of Dedication) Act of 1947 (Act XXXI of 1947) banning the dedication of girls to temples.\(^{107}\)

Legislative measures are meant to relieve society of its evils and seek its welfare.\(^{108}\) However, it has been difficult, even for the Law with its penalising clauses, to stop immoral traffic in women and girls which is being carried on clandestinely with or without the knowledge of the Law keepers.

**Women: Emancipatory Laws on Marriage and Divorce:**

As laid down by the Queen's Proclamation in 1857, the British Colonial Government of India was reluctant to meddle with the personal laws of Hindus and bring in changes in it by legislation.\(^{109}\) There was a "popular feeling among the Hindus that any attempt to legislate on Hindu law must be discharged, since such legislation affects Hindu religion. This attitude was based upon the assumption that the secular part of the Hindu law is the same as the religious part and

\(^{107}\) Letter No.13436-3, dated 29th December 1947 from the Secretary to Govt. of India, Govt. of Madras.

\(^{108}\) G.O.No.23, Legal Department, dated 26th January 1948.

this secular part has never been modified or superseded.\textsuperscript{110} However, with their western education and modern ideas, the educated elite exposed the evils in the social laws of the Hindus which stood much against the Hindu womanhood. Reformers like Roj, Kesab Chandra Sen, Annie Beasant, Veeresalingam; and legislators like, Sir Moropant Vishwanath Joshi, who was the Chairman of the Age of Consent Committee 1928-29 and G.V. Deshmukh stood for the emancipation of women from the time old evil customs which forced the female into marriage in childhood, denied widows, the right to remarry, and subjected women to the cruelty of husbands and denied them the right to divorce.\textsuperscript{111} These were related to the personal law of the Hindus with which the British did not like to interfere.\textsuperscript{112} However, when the agitation for reforms came from the Hindu reformers themselves, the British government came forward to bring legislation on the several issues of the Hindu law relating to women. At the same time, the pitiable state of women in India had drawn the attention of humanitarians and rationalists. G.V. Deshmukh, while moving the Bill further to amend the Special Marriage Act of 1872, said: "The problem is how to absorb

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\textsuperscript{110} Gajendragadkar, Justice., "The Hindu Code Bill" (Extension Lectures series of Karnataka University: Lectures on 12th and 13th April 1951), [Dharwad, 1951], P.8.
\textsuperscript{111} Ibid., P.9.
\textsuperscript{112} G.O.No.2667, Law (General) Department, dated 25th August 1926.
\end{flushright}
and assimilate the ideas of social justice which are prevalent in modern times. I think the laws with regard to marriage that are prevalent in the Hindu society are very unfair to the women, and it is from that point of view that I have brought forward this Bill". Debating on the same Bill, J.C.Chatterjee has stated that while calling Them with such titles as 'Sreemati', we are denying to our women the most elementary rights" and say that it is our custom that a man can marry as many wives as he wants, but a woman may never marry even if she becomes a widow at the age of 8 or 10 or 14. P.G.Solanki supporting the same Bill pictures vividly the plight of the women in India. He has stated that the Aryans of old times 'Hinduised' in India are cruel towards their own children and that it is most unfortunate that the Hindus who always praise the ancient culture of the Aryans have degraded themselves by acting as enemies to their own daughters.

The laws that the British enacted regarding Hindu marriage and divorce are based on the Hindu law and in consideration of the changing society, due to which old

113. Imperial Legislative Assembly Debates, Vol-V, 7th November 1941, New Delhi, P.482.
beliefs and customs fell from their traditional structure.\footnote{116} It is a very curious and typical feature of the growth of the Hindu law that different, and sometimes conflicting customs and practices, were recognised as valid in different areas, though all the areas in turn purported to owe allegiance to the same ancient texts. Dharma, the basis for all human activities, has two aspects - the religious and the secular. The secular aspect of Dharma is the positive law.\footnote{117} It has been the belief of the Hindu orthodoxy that if the positive law (the secular aspect of Dharma) is changed the structure of Dharma may fall. The Hindu Dharma Sastra with its two aspects was as rigid as Draco's code\footnote{118} notorious for its severity. The attempt of the British to bring social reforms through legislation was half-hearted, for the British rule was marked by a disinclination to make any violent departure in the matter of personal laws governing the Hindus and Muslims.\footnote{119} In fact, most of the Bills relating to the personal law of the Hindus are moved by the Hindu members of the assembly and have been passed into Acts by the British government.

\footnote{116} Extract from the Legislative Assembly Debates, Vol. VII, No.34, dated 17th March 1926, Delhi, PP.2-6.

\footnote{117} The Modern Review., Vol.XXIV, No.1-6, July-December 1918, Calcutta, P.10-11.

\footnote{118} Draco, Athenian statesman of 7th Century B.C. He was the first to codify the Athenian laws which were harsh.

MARRIAGE

Women and Marriage Law:

There has been an evolution in the Hindu marriage system from the Vedic period. "With increasing organisation of society, the institution of marriage gradually developed into a sophisticated system". The Hindu marriage involves the "transfer of domination over the damsel from the father to the husband". Marriage is a Samskara, obligatory upon all Hindus; it is a holy union between a man and woman for begetting a son, necessary for salvation and for performance of religious duties. Monogamy was prescribed by the Sastras. However, with the passage of time a Hindu was permitted to marry any number of wives even during the lifetime of one or more wives. But single-husbandedness is the lot prescribed for a woman under Hindu law which does not countenance Polyandry.

Hindu Marriage laws were regulated by the Dharma Sastras (Smrities), Personal opinions of the commentators on these Dharma sastras, and basically by customs and usage.


"The law of marriage is not to be found in the Vedas at all. It will be found in Manu Smriti, Yagnavalkya Smriti". The British passed a number of regulations in the 19th Century protecting the prevalence of custom and usage. In resolving matrimonial disputes, the British courts frequently referred to the Dharma sastras (Hindu Law). As some customs were revolting, their attempts to commence reform was encouraged by social reformers. The first in the line of abolishing evil customs was the abolition of child marriage by legislation in 1929.

Where the Vedas had not prescribed any age limit for marriage, girls were married at a suitable age when they had the discrimination to select their husbands. But, the Hindu law givers of latter period insisted on early marriages for girls. It was laid down by the Hindu law that it was the religious obligation of the parents to provide for their daughters by the time of puberty, husbands capable of procreating children. It was this social obligation on the part of the parents which brought into Hindu society the custom of child marriage.

124. Ibid.,
125. Yagnavalkya., i-52.,
Women: Law Against Child Marriage:

Generally, the Smritis (C.100 A.D. to 900 A.D.) advocated the marriage of girls at 8 and 10 years of age. Manu Samhito (200 B.C. - 100 A.D.) laid down that a man of 30 years age could marry a girl of twelve years, or a man of 24 years could marry a girl of 8 years. The custom of child marriage took strong roots in the Medieval Age. In Tamil Nadu, it was almost an universal practice among Brahmins to marry their children in their infancy. Speaking of the evils of child marriage Edward Thompson has stated that girls, who are married at a very young age before reaching Puberty, are ravished, their bodies maimed and their minds mutilated. At the age of twelve or thirteen many pregnant girls died in labour according to medical reports.

The Bengali reformer Keshab Chandra Sen stood against child marriage. Through his efforts the Native

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Marriage Act of 1872 was passed abolishing infant and child marriages.\textsuperscript{131} The Act made also Polygamy penal, sanctioned widow re-marriage and intercaste marriages for those who chose to come under the Act. Inspite of this Act, child marriages continued to be celebrated in various parts of India. Through the efforts of Behramji M. Malabari, who wanted to put down infant marriage and enforced widowhood, the British Government were influenced to give assent to the Age of Consent Bill, which became an Act in 1891 (Act X of 1891).\textsuperscript{132} This legislation gave protection to girls upto age of 12 years from being married. In the Madras Presidency, reformers like Veeresalingam, R. Raghunatha Rao and others welcomed the Age of Consent Act of 1891.\textsuperscript{133} The Bill introduced by Sir Hari Singh Gover in 1925 to amend section 375 of the I.P.C, raising the age of consent in material cases to 14 and in extra-marital cases to 16, was discussed in the Imperial Legislative Assembly and public opinion was awaited on it.\textsuperscript{134} Meanwhile the Bill introduced by Rai Sahib Haribilas Sarda on 1st February 1927 to penalise boys over 18 years marrying girls below the age of 14 was referred to

\textsuperscript{131} Offences Relating to marriage govt of India (The unpealed General Acts) Vol-I from 1834-1863, calcutta, 1875, P.300.

\textsuperscript{132} G.O.No.308, Public Department, dated 6th may 1892.

\textsuperscript{133} G.O.No.183, Public Department, dated 18th March 1892.

\textsuperscript{134} Letter No.2763 (MS) Home Department, dated 30th July 1942.
the Select Committee (M.V. Joshi Committee). Haribilas Sarda's Bill, on return from the Select Committee was passed. This Act, known as the child Marriage Restraint Act of 1929 (Act XIX of 1929), was popularly called Sarda Act. Section 5 (iii) of the Act prescribed the age of marriage for the bridegroom at 18 and for the bride at 15 years. Later by the Hindu Marriage Amendment Act of 1978 (Act 2 of 1978) it was prescribed that bridegroom must have completed 21 years and the bride 18 years. These reformatory laws have done away with the old practices of marrying boys and girls in their childhood or before reaching the prescribed age for marriage.

**Women: Laws Against Polygamy And Polyandry:**

In the Polygamous marriage custom a man has more than one wife at a time. This system of plurality of wives prevailed in Tamil Nadu as in other parts of India in 19th century and even in the first half of the 20th century. The position of many wives of the man was very miserable.

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135. G.O.No. 3971, Law (General) Department, dated 12th December 1927.

136. G.O.No.1661, Law (General) Department, dated 10th April 1930.

137. G.O.No.2636, Home Department, dated 9th October 1926.

138. Reproduced by Permission of the Authority of Man in India from Man in India, 57(2): 137-151, 1977.
Apart from economic plight, the average husband was not able to give "adequate sexual and emotional satisfaction to more than one woman." The British Government made some efforts to put down Polygamy. The Native Marriage Act of 1872 was made penal. Later, the Hindu Polygamous Marriage Restraint Bill was introduced by G.S. Motilal in the Imperial Legislative Assembly in 1938. It was published by the Madras Government in the Fort St. George Gazette dated 15th November 1938 in Tamil, Telugu, Kannada and Hindustani languages for the intimation of the general public. The Madras Hindu Bigamy Prevention and Divorce Act of 1949 aimed at prohibiting both Polygamous and Polyandrous Marriages and promote monogamy. The Hindu Marriage Act of 1955, which came into force on 18 May 1955, did away with Bigamous marriages. Under Section 13 (2) (i) of the Act of 1955, a wife married before the commencement of the Act can seek a divorce, provided another cowife is alive.

Polyandry is a form of union in which a woman has more than one husband at a time or in which brothers share a wife

139. Singh. K., Indian social system, [Lucknow, 1972], P.103.
140. G.O.No. 173, Public Department, dated 26th February 1903.
141. G.O.No. 61, Legal Department, dated 28th March 1947.
or wives in common. The status of women are lowered both from the Polyandarous and Polygamous marriages. In the former the woman is subjected to the command and sexual desires of many husbands; in the latter system of marriage she had to share the affection and care of the husband with many co-wives. It was a degrading custom which deprived the women the love and affection a wife in the monogamous marriage could enjoy. Sex-starved, very often due to the husband's attention to many other wives, her position in the harem was like that of a prisoner, lest others cast their eyes on her. Polyandry prevailed among the princes, landlords, and other rich men in India.

Polyandry was in practice among the Nayars of Malabar and Todas and Kotas of the Nilgiris. The Madras Government passed the Malabar Marriage Act of 1896 to register the "Sambandam" Marriages, which according to custom, permitted alliance between a man and a woman to cohabit as husband and wife. The Act of 1896 was replaced by the Madras Marumakkattayam Act of 1933 (Act XXII of 1933), according to

144. Papers on Indian Reforms-The women of India and what can be done for them, Madras, 1888, PP.81-82.
section 5 of which marriage contacted by a female governed by the Marumakkattayam law with a Hindu male during the continuance of a prior Marriage of such a Hindu male became void. The Madras Marumakkattayam (Amendment) Act of 1947 further altered section 5 with the condition that (1) during the continuance of a prior marriage which was valid under section 4, any marriage contracted by either of the parties there to on or after the date on which this Act came into force should be void, and that (2) on or after the said date, any marriage contracted by a male with a Marumakkattayam female, during the continuance of a prior marriage of such male should be void, notwithstanding that his personal law permits of Polygamy.

Women : Law regarding widow Remarriage :

There appears to have been no restriction regarding widow remarriage in the vedic period. Marriage then was a union between man and woman before the nuptial fire. Marriage, being sacramental, was unbreakable.

147. G.O. No.100, Law (General) Department, dated 10th January 1934; Malabar marriage Act 1896, Section 2.


149. Madras Marumakkattayam (Amendment) Act 1947, Section 5, Clause (1) and (2).

During the age of the law givers, it was laid down in the Manu's Smriti that a girl must be given in marriage only once, and that there can be no remarriage for her.\textsuperscript{151} Yajnavalkya took up the view that there is every danger of the social structure being corrupt, if women are allowed to reunite themselves with men after their husbands death.\textsuperscript{152} Obviously, the custom of widow remarriage did not exist in the Rigvedic times because girls were married when they became youthful and probably the number of girl widows was very small. "Those who became widows, if youthful, could live with their husband's younger brothers for producing progeny".\textsuperscript{153} This custom of cohabiting with the husband's younger brother is known as Niyoga.\textsuperscript{154} This practice continued even in the succeeding sutra and smriti periods. Later, the Niyoga custom disappeared in the Hindu society. The Hindu reformers decisively disapproved the custom and advocated widow remarriage.

In India, ironically enough it was men and not women who initially took up the cause of the downtradden women and

\textsuperscript{151} Ibid.,
\textsuperscript{153} Ibid., P.127.
\textsuperscript{154} Pratima Asthana., Women's Movement in India.,[Delhi, 1971], P. 29.
launched vigorous campaign against social evils effecting women. First champion of women's cause in the early 19th century was Raja Ram Mohan Roy. It was through his efforts and propaganda against sati that William Bentinck passed the famous Regulation No.XVII of 1829 abolishing the horrible custom of widow burning. In Madras, Regulation No. I of 1830 declared the practice of sati as illegal and punishable by the criminal code.

In the majority of the cases of child marriage, there was early widowhood for the innocent female children. The number of virgin widows, and young girls who became widows after consummation, was on the increase. The sufferings of the widows in the families, and the social ostracism imposed on them attracted the attention of reformers. Pandit Iswara Chandra Vidyasagar took up the cause of widows and started vigorous campaign in favour of widow remarriage. The movement launched by him spread to other parts of the country. He collected immense material from the Hindu scriptures in support of his views and wrote a treatise on

the Marriage of Hindu widows. Morally impelled by the requests of social reformers, and specially by Vidyasagar's convincing treatise, Government of India decided to legislate in favour of widow remarriage, though the laws of the Hindus did not permit widows to marry again. As a result the Hindu Widow's Remarriage Act was passed in 1856. According to this Act, a Hindu widow, even apart from custom, can contract a legal marriage, and the person she marries may even be a person of her father's gotra, because by her first marriage, her father's gotra had ceased to be hers. But, she forfeits on such marriage any right, or interest which she may have in her former husband's property. But the remarriage does not disable her from inheriting the property for her daughter or her son by the first marriage.

Social legislation passed in the early period of British rule failed to completely eradicate social evils, as the common people were not aware of these laws, and the

158. G.O.No. 175, Public Department, dated 2nd April, 1919.
orthodox society strongly opposed changes in the personal law. Reformers in the various parts of the country had to launch propaganda in favour of widow remarriage and against child marriage. Mahadev Govind Ranade in Bombay joined the Widow Marriage Association to uplift the widows from their miserable plight, while Dhondo Keshav Karve, himself a widower, set an example by marrying in 1893 a twenty-three year old widow. In the Madras Presidency, Veeresalingam Pantulu founded the "Widow Marriage Association" in 1891. Mahatma Gandhi deplored the treatment meted out to Hindu widows and observed that every widow had as much right to remarry as every widower. Sarojini Naidu, herself a child widow, latter married Harindranath Chattopadhyaya and presented a model for inter-caste, inter-provincial widow marriage. Hindu Widow's Remarriage Act, passed during Lord Canning's time, proved a dead letter, since it failed to secure for the widow remarrying, her right to property inherited by her previous husband. In the 19th Century, both the widow and the person who married her were generally excommunicated. Monier Williams mentions a cloth merchant of

165. Ibid., P.37.
166. Ibid., P.79.
Ahmedabad who had married a widow of his own caste. But he was excommunicated, no one had trade dealings with him, no one was to marry any of his children, no temple admitted him, and if he died no one was to carry his body to the burning ground. 167

No other Acts relating to widow marriage have been passed by the British later, apart from the Hindu Widow's Remarriage Act of 1856, which came into force on 25th July 1856. After India's freedom, it was extended to the New provinces and the merged states by Act 59 of 1949. 168 The object of the 1856 Act has been to remove all obstacles to the marriage of Hindu widows. According to the preamble of the Act, as the Hindu widows, with certain exceptions, are incapable of contracting a second marriage and as the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property, and the marriage of Hindu widows would tend to the promotion of good morals and to the public welfare, the Act has been passed.

Women : Inter-Caste Marriage Laws :

Caste rigidities imposed by the Dharma Sastras had done away with the vedic freedom of Anuloma and Pratiloma

marriages. These two types of marriages related to inter-caste marriage alliances. The *Anuloma* marriage is one between a man of a higher caste and woman of a lower caste, while the *Pratiloma* marriage is that between a woman of a higher caste and a man of a lower caste. According to the Hindu law *Pratiloma* marriages are absolutely void unless sanctioned by custom. Anuloma marriages, though rare, are often held not invalid.

Among the pioneer social reformers who stood for inter-caste marriage and widow-remarriage was Keshab Chandra Sen, whose propaganda in favour of intercaste marriage influence the British government to pass the Special Marriage Act of 1872. This Act is also known as the Civil Marriage Act or Inter Caste Marriage Act and the Brahma Samaj Marriage Act. It provided for the solemnisation and registration of marriage according to ceremonies different from the Dharma Sastras. "The Act as originally passed did not apply to Christians, Jews, Hindus, Mohammedans, Parsis, Buddhists,

171. G.O. No.634, Public Department, dated 10th September 1890.
172. G.O. No.746, Public Department, dated 6th November 1890.
Sikhs or Jains.\textsuperscript{173} It referred only to the Brahmos belonging to the Brahmo Samaj. However a large number of men and women, even while belonging to the several religions mentioned above, got married under this Act by pretending that they did not belong to any of them.\textsuperscript{174} The Privy Council declared that Brahmos belonged to the category of Hindus and to resolve the anomaly, the Act was amended in 1923 whereby the Act was made applicable to Hindus, Buddhists, Sikhs and Jains.\textsuperscript{175} The special Marriage Act, on the whole, for the first time gave both men and women the liberty to have inter-caste marriages. The marriages were registered, divorce was permissible and re-marriage allowed. The Special Marriage Act of 1872 has been replaced by the Special Marriage Act of 1954.

Besides the Brahmo Samaj, which leaned towards Christianity, the Arya Samaj founded in 1875 by Dayananda Saraswati had a new concept of Hinduism.\textsuperscript{176} It stood for purity of Vedic Hinduism with its protestant outlook. Arya Samaj recognised equality of men and women. While the

\begin{flushleft}
174. G.O.No.817-18, Public Department, dated 27th November, 1890.
175. G.O.No.3580, Law (General) Department, dated 17th December 1924.
176. G.O.No.1363-64, Judicial Department, dated 5th July 1893.
\end{flushleft}
Special Marriage Act of 1872 was passed recognising the intercaste marriages among the Brahmos, the Arya Marriage Validation Act of 1937 (Act 19 of 1937) Validated the intercaste marriages between Arya samajists. Many widows and destitute women found refuge under this Act which favoured intercaste and widow remarriage.

Christian Women: Law Marriage:

Many of the lower caste Hindus in Tamil Nadu, being socially ill-treated by the upper classes, were attracted by the prospect of a better life that Christianity promised and became converts to Christian religion. To regulate marriages of christians in India, the British parliament passed in 1852 an "Act authorising the solemnisation of marriages of Christians in India in the presence of Marriage Registrars to be appointed by the Government, for the native converts of Christianity." This was followed by the Indian Christian Marriage Act of 1872. This Act permitted as valid a marriage of a Christian with a non-Christian. In other words this Act admitted intercaste and inter-religious marriages between Christians and others. Prior to these two

177. G.O.No.2951, Home Department, dated 27th June 1941.
179. G.O. No.793, Public Department, dated 22nd November 1890.
Acts, a law was in force in India under British Government permitting dissolution of marriage of 'Native' converts. It was entitled "The Native converts' Marriage Dissolution Act, 1866," its object being to legalise under certain circumstances, the dissolution of marriages of 'Native' converts to Christianity.¹⁸⁰ Later in 1950, the term 'Native' was deleted by an amendment Act. According to the original Act of 1866, if the 'Native' Hindu husband embraced Christianity and in consequence of the change in religion, if his 'native' wife for, the space of six continuous months, deserted repudiated him, he may sue for Conjugal Society. Like wise, if a 'Native' wife changes her religion to Christianity, and if in Consequence of such a change her Native husband, for a space of six continuous months, deserts or repudiates her, she may sue him for Congugal Society.¹⁸¹ The Judge after giving a year's time in both the circumstances, may dissolve the marriage and "it shall be for the respective parties thereto marry again as if the prior marriage had been dissolved by death and the issue of any such remarriage shall be legitimate any personal law to the contrary not withstanding".¹⁸² The Indian Christian


¹⁸¹ The Native Convert's Marriage Dissolution Act: 1866, Section 4 and 5.

¹⁸² Ibid., Sections 15 and 19.
Marriage Act also provided scope for Indian women to change their religion and take husbands of their choice.

**Muslim Women: Law of Marriage:**

In the Muslim society marital union is denoted by the Arabic word *Nikah* (Marriage). "Nikah is the contract of husband and wife which legalises their sexual intercourse and imposes certain duties and rights between themselves". "Nikah is defined to be a contract which has for its object procreation and legalising of children". The terms and conditions of marriage are governed by law. "The wife in a limited sense, corresponds to 'property' and dower is the 'price'. Marriage in Islam gives very unequal rights to man and woman. A man is allowed to marry as many as four wives and this automatically brings down the social status of women and is the cause of untold hardships and misery for them.

Every Mohammedan who is of sound mind and has attained puberty can marry. Muslim law prescribes the age of puberty

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for both males and females at 15 years. A wife under 18 years can file a suit for divorce.

For the validity of a marriage there should be a proposal made by or on behalf of one of the parties to the marriage and an acceptance of proposal by or on behalf of the other, in the presence of two males or one male and two female witnesses.

Jabr or guardianship for marriage is regulated by the personal law of the Muslims, and the guardian and wards Act does not effect it. The persons who are qualified to act as guardians for marriage are (1) father, (2) Paternal grand father, (3) brother or other male relation. In default of paternal relations, the right devolves upon the mother, Maternal uncle, or aunt or to her maternal relations.

During Marriage, the bride is given dower or "Bride Price". This called Mahr in the Muslim law. It is a sum of

189. Constituent Assembly of India (Legislative) Debates, No.1, Vol.1, No.1, 11th February 1946, New Delhi, P.1502.
money or other form of property which a wife is entitled to receive from the husband in Consideration of marriage.  

"The institution of marriage places the woman in a subordinate position. Religion makes the husband the family head and expects the wife to obey and serve him. These bring down the station of woman". Mehr (dower) is generally meant to be Security for the wife against the Possibility of divorce at husband's free will.

There is another form of marriage called Muta Marriage recognised by the Muslim law. "This form of period marriage is expressly contracted for a definite agreed period however short or however long". It is essential that the period should be specified at the time of the contract of such a marriage. After the expiry of the period, the contract is automatically terminated and the marriage stands dissolved. The amount of dower payable by the husband in the Muta form of marriage should be fixed at the time of marriage. (1) If no period for the marriage is specified,

193. G.O.No.39, Legal Department, dated 22nd May 1936.
but the dower is fixed, the marriage is to be an ordinary marriage for life with all the consequences of such marriage. 

(2) If the period is specified and no dower is fixed, then the contract is deemed to be void and no marital relationship exists between the parties. 194

"Muta is not recognised as a valid form of marriage among the Sunnis and Shias of the Islamia School. The Shias recognise such a marriage as valid". 195 Muta is a marriage for pleasure, the period for its existence and the dower to be paid to the wife being fixed. In this form of marriage the social position of the woman falls low and after the termination of the period fixed, she no longer remains as wife and the marital relationship ceases.

DIVORCE

Women: Divorce Laws:

Divorce is something foreign to the Hindu point of view, for marriage for the Hindus is a sacrament unbreakable throughout life. 196 In the Vedic and post Vedic literature, there is no reference to or evidence about divorce. In the Smritis also, marriage is considered indissoluble: Manu says "Let mutual fidelity continue till death. This may be

194. G.O.No.79, Legal Department, dated 6th April 1938.
considered as the summary of the highest dharma of husband and wife".\(^{195a}\) Manu goes to the extent of saying that a girl cannot be released from her husband even if he sells her or abandons her. This fact is evident from the episodes of Harischandra and Chandramati (Selling the wife), and Nala and Damayanti (Abandoning the wife). Even for adultery a wife could not be abandoned, as Kane has pointed out.\(^{196a}\)

According to A.S. Altekar, divorces were permitted before the beginning of the Christian era under certain circumstances.\(^{197}\) Narada and Parasra have allowed a wife to dissolve the marriage, if the husband is found to be impotent.\(^{198}\) Narada and Kautilya allow a woman to seek a second husband, if the first one is missing, dead, becomes an ascetic, is impotent, or has fallen from the caste.\(^{199}\) According to Kautilya, a divorce may be obtained only in the case of mutual enmity and hatred between the husband and wife.\(^{200}\) Inspite of such extraordinary circumstances

199. Ibid., P.191.
200. Ibid., P.192.
permitting divorces, the indissoluble nature of the Hindu Marriage successfully kept the Hindu women willing slaves to their husbands. The husband being the lord and Master of the wife, the wife was expected to worship him even though he was devoid of virtues. "The ancient writers cleverly manoeuvred the minds of women in such a way that they accepted their lot most submissively and devotedly" as Pativratas. The ideal of sati (true wife) became popular. The women, who had no identity and existence of their own, apart from their husbands, were left only with the choice of following their husbands even in death. With the passage of time sati became the highest symbol of Hindu womanhood and many women immolated themselves on the pyre of their husbands.

It was in this orthodox and traditional background that hesitant efforts to legalise divorce among the Hindus originated. The difference between divorce and judicial separation has to be noted in regard to the break of marital relationship' "While the decree of divorce dissolves the marriage, the one of judicial separation merely entitles the parties to separate from board and bed."

202. Ibid., P. 49.
In 1850, during the days of the East India Company, the Royal Commission was appointed in England to inquire into the law relating to matrimonial offences. The Matrimonial Causes Act, 1857 was formulated on the basis of the report of the commission. The Indian Divorce Act IV of 1869 largely bears that pattern. The special Marriage Act of 1872 to which the Indian Divorce Act IV of 1869 applied, the Parsi Marriage and Divorce Act of 1936, the special Marriage Act of 1954 this Act was passed repealing the special Marriage Act of 1872 and the Hindu Marriage Act of 1955 have adopted various principles from the matrimonial laws of England. "The relief of Judicial separation and divorce are primarily fashioned on the English law with minor modifications.

Grounds for Divorce:

The accepted ground for Judicial separation and divorce are adultery, cruelty, desertion, change of religion, insanity or mental disorder, leprosy, venereal

204. An Act of Amend the Births, Deaths and Marriage Registration Act 1886, Section 32, Act VI 1886.

205. G.O.No.230, Law (Legal) Department, dated 24th April 1928.

206. G.O.No.4921, Home Department, dated 10th October 1938.

207. G.O.No.1209, Home Department, dated 5th March 1938.

diseases, presumption of death, entering religious order, undergoing sentence of imprisonment for seven years or more. The grounds apply to the husband or to the wife.209

The provision for divorce and judicial separation are contained in the following Acts passed in different periods of the British rule. A comprehensive law is laid after India's freedom in the Hindu Marriage Act of 1955.210 The grounds for divorce and judicial separation are contained in the following clauses of the respective Acts given below:

Adultery
1. The Indian Divorce Act 1869 .. Sections 10 and 22.
2. The Parsi Marriage and Divorce Act 1936 .. Sections 32 and 34.
3. The Special Marriage Act 1872/1954 .. Section 23.
4. The Hindu Marriage Act 1955 .. Sections 13(1)(i).211

Adultery is voluntary sexual inter-course, after the solemnisation of marriage, with any person other than his or her spouse.

211. Ibid., P. 122.
Cruelty

'Legal Cruelty' may be defined as conduct of such a character as to have caused danger to life, limb or health (bodily on metal) or as to give rise to a reasonable apprehension of such danger,\(^{212}\) (1) the provisions for divorce and judicial separation are contained in the following Acts:

1. The Indian Divorce Act 1869 .. Sections 10 and 22.
2. The Parsi Marriage and divorce Act 1936 .. Sections 32(e) and Proviso ; and Section 34.
3. The Special Marriage Act 1872/1954 .. Section 27(1) (d).
4. The Hindu Marriage Act 1955 .. Section 13 (1) (ia).

The Parsi Marriage and Divorce Act of 1936 provides, in addition to the usual grounds, an additional right to the wife to obtain a divorce if she has been compelled by her husband to prostitution.\(^{213}\)

Desertion

The Indian Evidence Act 1869 has left 'desertion' undefined, while the special Marriage Act 1954 and the Hindu

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\(^{212}\) Ibid., P. 132.

\(^{213}\) The Parsi Marriage and Divorce Act 1936, Section 32(e).
Marriage Act 1955 have passed explanation for the term. While dealing with a case of desertion the Supreme Court has held that for desertion two essential conditions, namely separation and the intention to bring cohabitation permanently to an end must exist on the part of the deserting spouse. The statutory provisions for divorce are contained in the following Acts:

1. The Indian Divorce Act 1869 .. Section 10, 20 and 32.
2. The Parsi Marriage and Divorce Act 1936 .. Section 32(g).
3. The special Marriage Act 1954 .. Section 27(1)(b).

Change of Religion

Under the Hindu Marriage Act 1955, section 13(1)(ii), any marriage solemnised whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has ceased to be a Hindu by conversion to another religion. On the other hand, the Special Marriage Act of 1954, which replaced the Special Marriage Act of 1872, being a secular Act, change of religion does not furnish a ground for dissolution of marriage under this Act. The Indian Divorce Act of 1869 does

214. Kripalini V Meena, AIR 964 Section 40.
not provide change of religion as a ground for seeking
dissolution of a marriage. Section 32(f) of the Parsi
Marriage and Divorce Act of 1936 provides that any married
person may sue for divorce on the ground that the defendant
has ceased to be a Parsi. 215

Insanity of Mental Disorder

Insanity or mental disorder is also a statutory ground
for divorce. Section 13(1)(iii) of the Marriage Act of 1955
and section 27(1)(e) of the Special Marriage Act of 1954
provide for dissolution of marriage by a decree of divorce
on the ground that the party against whom the Petition is
submitted to the court has been incurably of unsound mind
for a continuous period of not less than three years
immediately preceding the presentation of the petition.
Section 32(b) of the Parsi Marriage and Divorce Act of 1936
provides unsoundness of mind as a ground for divorce. 216

Leprosy

The Indian Divorce Act of 1869 and the Parsi Marriage
and Divorce Act of 1936 do not include leprosy as a ground
for dissolution of marriage. The special Marriage Act, in

215. G.O.No. 2952, Home Department, dated 13th July 1940.
216. G.O.No.61, Legal Department, dated 28th March 1947.
its section 27(1) provides that if the respondent has been suffering from leprosy, the disease not having been contracted from the petitioner, a divorce decree for dissolution of Marriage may be passed.\textsuperscript{217} On the other hand, section 13(1)(iv) of the Hindu Marriage Act, 1954 as amended in 1976 provides that any Marriage can be dissolved by a decree of divorce on the ground that the other party has been suffering from a virulent and incurable form leprosy.

**Venereal Disease**

"Venereal diseases comprise a number of contagious diseases that are most commonly acquired in sexual intercourse. Included in this group are both a destroyer of life (Syphilis) and a preventer of life (gonorhea)."\textsuperscript{218}

Section 13(1)(v) of the Hindu Marriage Act of 1955, as amended in 1976, affords that any marriage solemnised whether before or after the commencement of this Act, may, on a petition represented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party "has been suffering from a veneral disease in a

\textsuperscript{217} G.O.No. 1072 (Ordinary) Home Department, dated 28th May 1917.

\textsuperscript{218} Encyclopaedia Britanica., Vol.22, 1967, P. 945.
communicable form". The section 27(1) (f) of the Special Marriage Act of 1954 is similarly worded. According to section 32(e) of the Parsi Marriage and Divorce Act of 1936, if the defendant has infected the plaintiff with venereal disease, it is enough ground for petitioning for divorce. However, the Indian Divorce Act does not make any provision for a matrimonial relief on the ground of venereal disease.

Presumption of Death

A Person's death is presumed, if for a long period his whereabouts are not known. "The ancient Hindu law recognised such a presumption, but the period prescribed was 12 years, presumably because then means of communications were not as speedy then as they are to day." Section 13(1) (vii) of the Hindu Marriage Act of 1955 and Section 27(1)(h) of the Special Marriage Act of 1954 provide for divorce if the husband or the wife, as the case may be, has not been heard of as being alive for a period of seven years or more by those persons who would have heard of it had that party been alive.

Entering Religious Order

The Special Marriage Act, the Parsi Marriage and the Indian Divorce Act have no provisions for the dissolution of marriage on account of a spouse entering a religious order. According to the Dharma Shastra, if a man takes to Sanyasa he renounces the family ties and there is no question of divorce. The Hindu Marriage Act of 1955 in its section 13. (1) (iv) provides that on the presentation of a petition by either the husband or the wife, their marriage may be dissolved by a decree of divorce on the ground that the other party has renounced the world by entering any religious order.\(^\text{221}\)

Under Going Sentence of Imprisonment for Seven Years of More

The Special Marriage Act in its section 27(1)(c) and the Parsi Marriage and Divorce Act under section 32(f) provide special ground for divorce. On petition by either the husband or the wife their marriage may be dissolved by a decree of divorce for reason that the respondent is undergoing imprisonment for seven years or more for an offence as defined in the Indian Penal Code of 1860.\(^\text{222}\) The

\(^{221}\) File.No. 27/13/36 - Judicial Department Govt of India, dated 31st March 1937.

Indian Divorce Act of 1869 and the Hindu Marriage Act of 1955 have no provisions for divorce on ground of imprisonment.

Apart from the above referred to grounds for divorce, there are other grounds special to the wife which are advantageous to her. The Indian Divorce Act of 1869 being more than a century old provided advantage to the husband. It made discrimination between husband and wife in regard to the grounds for seeking divorce. While a husband can ask for divorce on the Sole ground of adultery, such remedy is not available to a wife under the Indian Divorce Act. But section 13(2) of the Hindu Marriage Act of 1955 is favourable to the wife for seeking divorce on several grounds: This section states that a wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground (i) that any other wife of the husband was alive at the time of the solemnisation of the marriage of the petitioner, and the other wife is alive at the time of the presentation of the petition, (ii) that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or bestiality, (iii) that the petitioner (the wife) was living apart, after the court having passed a

decree or order against the husband awarding maintenance to the wife and that since the passing of such decree or order cohabitation between the parties has not been resumed for one year or upwards, or (iv) that her marriage (whether consumated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.\(^\text{224}\)

The provision in the law for divorce by mutual consent is also advantageous to the wife, if circumstances beyond control forces her to seek the dissolution of her marriage. The Hindu Marriage Act 1955, as amended in 1976 provides for submitting a petition for the dissolution of their marriage by both husband and wife on the ground 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.\(^\text{225}\)

Christian Women : Divorce Law :

The Indian Christian Marriage Act 1872 (Act XV of 1872, and the Indian Divorce Act of 1869 (Act IV of 1869)

\(^{224}\) The Hindu Marriage Act 1955, Section 13(2)(i)(ii)(iii) and (iv).

\(^{225}\) Ibid., Section 13B (inserted by Act 68 of 1976).
provide for divorce among Christians in India.\textsuperscript{226} The Special Marriage Act of 1954 provides a Special form of marriage which can be taken advantage of by any person in India and by citizens of India in foreign Countries irrespective of the faith which either party to the marriage professes. It is therefore, open to the Christian also, to avail of this special Act in regard to getting the marriage registered and seek divorce according the grounds as laid down in the Act.

The Indian Christian Marriage Act of 1872 and the Indian Divorce Act 1869 dealing with the law of marriage and divorce of the Christians in very old. "A Bill to amend and codify this law (1872 Act) was pending before the Parliament in 1962, but the Bill lapsed when the particular session of the parliament was dissolved".\textsuperscript{227}

\textbf{Muslim Women : Divorce Law :}

The form of marriage amongst the Arabs in the days of Mohammad was polygamy. Women captured in war were either married or kept as mistresses. In addition, marriage could be contracted by paying \textit{Mahr} (bride price) to the father or

\textsuperscript{226} G.O.No. 1544, Home Department, dated 24th April 1942.
kin of a woman.\textsuperscript{228} In both methods, the prominent idea was the husband's right on the woman captured or purchased. Marriage, according to Islamic law, strictly speaking, is a civil contract. It is a contract made between two persons of opposite sex with the object of intercourse, procreation and the legalising of children.

Among the Muslims every chance is given to the husband and wife not to break off marital relations and maintain conjugal ties. Divorce is decided only as a last resort. Divorce is permitted thrice. Every divorce must be followed by a period of waiting called \textit{idda}, which is normally four weeks. In the case of women whose menstruation has staffed the period of \textit{idda}, is three months, and in the case of pregnant women, the waiting period is till delivery.\textsuperscript{229}

After the first divorce, the parties have the right to reassert their conjugal relations within the period of waiting, and to remarry after the waiting period is over. A similar right is given to them after a second divorce, but not after a third. A man would some time pronounce divorce (Talaq) thrice on one and the same occasion and this would be understood as meaning that the divorce has been given

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\item \textsuperscript{228} Shams-ul Akhbar., 28th May, 1892.
\end{enumerate}
Divorce may be given orally, or in writing, but it must take place in the presence of witnesses.

When the wife was divorced irrevocably, by thrice pronouncing the divorce formula, and the husband wanted to take her back again, she had first to marry a third person on condition that he should divorce her after having sexual connection with her. This method of taking back a divorced wife which prevailed in the pre-Islamic days was called Tahlil or Halala.

In the pre-Islamic days a man could keep himself away from his wife by the custom of Ila and zihar. Ila means literally swearing and signifies the taking of an oath that one shall not go into one's wife. "In the pre-Islamic days the Arabs used to take such oaths frequently, and as the period of suspension was not limited, the wife had sometimes to pass her whole life in bondage, having neither the position of a wife, nor that of a divorced woman free to marry elsewhere. The Holy Quran reformed this state of things by commanding that, if the husband did not resort to

230. Ibid., P.19.
231. Ibid., P.23.
232. Ibid., P.22.
conjugal relations within four months, the wife should be divorce". 233

In the ancient days, an Arab divorced his wife by pronouncing the word Zihar, meaning "thou art to me as the back of my mother". In this form of divorce also "the woman was not at liberty to leave the husband's house, and remarry as a deserted wife". 234

Yet another form of divorce was Lian in which the husband and wife accused each other, the husband accusing the wife of adultery but has no evidence to prove it, while the wife denies the accusation. 235

The right of repudiation of the marriage contract is with the husband. A wife has distinctly inferior status. The word Talaq meaning "repudiation" comes from the root tollagha, which means "to release (an animal) from a tether; to repudiate the wife, or free her from the bondage of marriage". 236 The husband's power over the wife is indicated in his right to divorce the wife.

233. Ibid., P.24.
234. Ibid.,
Traditional Law permitted a Muslim wife to seek dissolution of her marriage under three forms: "(a) divorce where the husband delegates the right of divorce to the wife in the marriage contract stipulating that she may divorce him on his taking another wife; (b) divorce by agreement, on the wife giving some consideration to the husband; and (c) divorce by mutual consent". In order to consolidate and clarify the provisions of the Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie, the Imperial legislature of India passed the Dissolution of Muslim Marriages Act, 1939 (Act 8 of 1939). This Act provides for a woman married under the Muslim law the right to obtain a decree for divorce if

1. The whereabouts of the husband is not known for a period of 4 years;
2. The husband has neglected or failed to provide for her maintenance for a period of 2 years.
3. The husband has been sentenced to imprisonment for a period of 7 years and upwards.
4. The husband has failed to perform his marital obligations for a period of 3 years.

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237. Status of women in India, ICSSR, [New Delhi, 1975], P.46.
5. The husband was impotent at the time of marriage and continues to be so;

6. The husband has been insane for a period of 2 years or is suffering from leprosy or a virulent venereal disease;

7. The woman, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriages before attaining the age of eighteen years, provided that the marriage has not been consummated;

8. The husband treats her with cruelty;

9. On any other ground which is recognised as valid for the dissolution of marriage under Muslim Law. 238

Cruelty on the part of the husband means that (a) he habitually assaults her or makes her life miserable; (b) he associates with women of evil repute or leads an infamous life, (c) attempts to force her to lead an immoral life; or (d) disposes her property or prevents her exercising her legal rights over it; or (e) Obstructs her in the observance of her religious profession or practice; or (f) if he has

238. The Dissolution of Muslim Marriages Act, 1939., sections 2, (i) to (ix).
more wives than one; does not treat her equitably in accordance with the injunctions of the Quran.\footnote{3}{Ibid., Section 2 (viii); a to (f).}

The Muslim married woman's renunciation of Islam or her conversion to a faith other than Islam, does not come in the way of her right to obtain decree for the dissolution of her marriage.\footnote{4}{Ibid., Section 4.}

The Muslim Divorce Act of 1939 has given much relief to Muslim woman being under the power of the husband. Though the Divorce Act has given her freedom for dissolution of her marriage, the average wife remains faithful to the husband.

Women: Laws Regarding Adoption, Maintenance and Property

Adoption:

The right of a Hindu woman to adopt was restricted by the Hindu law. According to \textit{Vyavahara Mayukha} of Nilakantha, in regard to adoption, the widow had to obtain the consent of her late husband's father, even though her husband had separated from his father during his life time.\footnote{1}{Gajendragadkar. justice. P.B. \textit{Op.cit.}, P.15.} Among the Dwijas (Brahmins) a daughter's son could not be adopted.
Where a husband can either himself make an adoption or authorize his wife, "a woman can not adopt by herself". In South India, if a widow wants to adopt, the want of the husband's assent may be supplied by that of his sapindas after his death.

The Hindu Adoptions and maintenance Act of 1956 (Act LXXVII of 1956) has brought reforms in regard to Hindu law of adoption. It removes several restrictions imposed by the Dhamashastras on women to adopt a son or daughter. The Act provides that any Hindu female can take in adoption a son or daughter, provided the woman is of sound mind and not a minor. In case she is married, her marriage should have been dissolved, or her husband is dead or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Maintenance:

The Hindu Adoption and Maintenance Act of 1956 provides also for the maintenance of women under certain circumstances: Section 18 (1) of the Act provides that a Hindu wife is entitled to be maintained by her husband.

during his life time. Section 18 (2) entitles the wife to live separately from her husband without forfeiting her claim to maintenance\textsuperscript{244}.

(1) He is guilty of desertion (2) has treated her with cruelty, (3) is suffering from a virulent form of leprosy, (4) has any other wife living, (5) keeping a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere, (6) Ceases to be a Hindu by conversion to another religion, and (7) if there is any other cause justifying her living separately\textsuperscript{245}.

Under Section 18 of this Act, a Hindu wife is entitled to be maintained by her father-in-law after the death of her husband, if (a) she has no property of her own and if she is unable to obtain maintenance from the estate of her husband or her father or mother, or (b) from her son or daughter, if any, or from the estate of her son and daughter. This obligation is not enforceable if the father-in-law has no means to do so from the coparcenary property in his possession, or when the daughter-in-law remarries\textsuperscript{246}.

\textsuperscript{244} Giri Raja Gupta. (Ed.), \textit{Main Currents in Indian Sociology II: Family and Social Change in Modern India}, [New Delhi, 1976], PP.XXIV.

\textsuperscript{245} Ibid.

\textsuperscript{246} Sushila Mehta., \textit{Constituion from the Revolution and The Status of Woman in India}, [New Delhi, 1982], PP.114-115.
Women: Laws Regarding Property:

In ancient times there was prejudice against allowing women to hold property. The wife was theoretically recognised as the co-owner of the family property with her husband, but in actual practice she could not force a partition on her husband against his will, thus a "widow's right to inherit her husband's property remained unrecognised". During the Sutra period (C.6th century B.C. to 3rd Century B.C.) women gained a secure social position at the cost of their economic rights. Generally the widow did not inherit her husband's property, though she had an absolute right of maintenance out of her husband's property.

Sutrakaras like Asastamba and Gautama divided property into two distinct categories, each category having its own mode of devolution, namely (1) the property belonging to the father, the husband and other males, which was inherited by the male line, and (2) the property which belonged to the mother, wife and other females and devolved upon their female progeny. The second type of property was the


'Stridhana'. The Stridhana was the property for the women in its strictest sense, as its owner had every right to hold, control, and use it. Inheritance of the Stridhana was also strictly confined to females, assuring property to girls through their womanhood and death.

Early attempts were made by the British Government to interfere with the personal law of the Hindus in the 19th century. Encouraged and backed by educated social reformers, such laws like the Sati abolition Act 1829, and the Hindu widow Remarriage Act of 1856 were passed. The earliest legislation with regard to property appears to be Transfer of Property Act of 1882. The Transfer of Property Amendment (supplementary) Act of 1929 amended the Madras Acts of 1914 and 1921 and the Hindu Disposal of property Act of 1916. None of these Acts was favourable to the Hindu women or widows.

The Hindu Widow's Right to Inheritance Bill, introduced by Haribilas Sarda in the central Legislature in 1930 was sent to the British Presidencies, including Madras, for circulation and opinions were gathered. This Bill was introduced on the ground that the Hindu law of inheritance, so far as women are concerned, is unsatisfactory and unjust, and the position of the Hindu Widow under the Hindu law is deplorable. A Hindu Widow does not get any share in her father's property, nor does she get any in the husband's. As a rule, a widow's right as heir does not go beyond her claim to a personal maintenance. For this reason, where a woman inherits to a male, his heirs and not hers take the property at her death.

A widow in the Hindu Society was at the mercy of the coparceners. Even though her husband may have amassed the entire wealth of the family, the entire property went to the surviving male members of the family, and she had only the right to claim maintenance for herself. Haribilas Sarda's Bill proposed, therefore, to give relief to Hindu Widows by giving them a share in the family property and make them the

253. G.O.No.815 A-2, dated 22nd February from the Secretary to Govt. Government of Madras Law Department to Collector of Tirunelvelly, Diwan Bahadur K. Sundaram Chettiar, District Judge, Advocate Journal, Madras High Court; (b) G.O. No.2180 dated 19th May 1930, Government or Madras, Law (G) Department, Madras.
sole owners of their deceased husband's property.254

The Hindu Women's Rights to Property Act of 1937 invests the widow with the right to inherit her husband's share in the family property, irrespective of the consideration as to whether her husband had effected his separation from the joint family or not. Thus the 1937 Act gave fresh right to women in regard to property.255 The effect of this Act is to enlarge the maintenance right of the widows to a right to demand a share in the property from which the maintenance is claimable and to introduce some more widows as heirs in the line of succession. "Thus a widow of a coparcener is entitled to demand a partition and delivery to her of his share without being confined only to a right to maintenance and the widow of a predeceased son, and the offspring of a predeceased son, are let in as heirs to the separate property of a Hindu in respect of which he has died intestate".256

Further changes were made in regard to women's succession of Property by passing the Hindu Succession Act

255. G.O.No.32, Legal Department, dated 7th November 1939.
of 1956 (Act XXX of 1956). This Act completes the most important part of the Hindu Code suggested by the Rao Committee in 1947. The first instalment of the piece-meal legislation was the Hindu marriage Act of 1955, dealing with the law relating to marriage and Divorce among the Hindus, and the next was the Hindu succession Act of 1956, which is intended to "evolve a fairly uniform system of law in the entire country with respect of intestate succession". The biggest change made by the Act is that women are eligible to inherit and hold property in the same way as men. In the past the women had only limited right over property inherited. For instance, they could not sell it except in certain circumstances. They could use it only in their lifetime. This disability is removed by the succession Act of 1956. For the first time, this Act provides the daughter with a share in the father's property, both self acquired and ancestral.