CHAPTER - V

THE LATER LAW-BOOKS AND COMMENTARIES ON HINDU LAW
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The concept- Kanyadan:

All the later Smriti-writers followed Manu in one way or the other. However, there were certain changes, probably caused by the pressing needs of the time and these changes throw a flood of light on the trend of the society at that time. There are round-about forty-six Dharma-Shastras. Of these Yajnavalkya and Parashar Smriti are most important. Vishnu, Narad and Brihaspati Smritis are also important. Medhatithi and Madhavacharya have written commentaries on Smrities. These Smrities and Puranas also deal with the marriage ceremony, different types of marriages, restrictions on marriages, inter-caste marriages etc. The important point to be noted is - the legal importance given to the persons, viz. father, brother and others who are entitled to give away the maiden in marriage (कन्यादान). The notion that, unless the daughter is given away by her guardians, she does not belong to the family of her husband, is clearly a later development. The excessive importance
was given to Saptapadi (सप्तपदी०). Even today, in the 20th century, this point (सप्तपदी०) is taken into consideration by courts while deciding the cases between couples. Another important point to be noted here is the gradual introduction of the system of child-marriage. Brihaspati says "a man of thirty may marry a girl of ten and one of twentyone may marry a girl of seven years old. "However, in Mahabharat, the marriagable age of the girl is mentioned as sixteen — ( "क्रिः स लघुः छोऽ इन्द्राम भायाः विन्देत नरिन्त्राय०।). Along with the child-marriage, great importance was gradually began to attach to the importance of Kula. Seven qualities are stated — family, mentality, health, age, education, wealth and support.

Foreign invasions:

From the third century onwards Hunas and Arabs began to pour into India. However, their influence was not palpable. But from the beginning of the eleventh century, Muslim invaders entered India. They not only carried away the wealth of India but also women whom they took as slaves. The elders of
society began to device means of reclaiming these unfortunate abducted women into the folds of Hindu society. The result was the composition of Devala Smriti (देवल स्मृति). It recorded the expatiatory ceremonies to be performed both by men and women living in Mlechchas houses, before they could be absorbed back into Hindu society. The rigidity of the penance (प्रायविक्षित) depended on the extent of the crime committed.

**Sati:**

One of the revolutionary change that came into force in contemporary society was the legal sanction for the self-immolation (तत्ति) of a widow. The earlier law-givers have not mentioned it anywhere; they have imposed temporary asceticism, after which widows could marry. Vishnu smriti and Brihaspati prescribe an alternative course (to virtuous and ascetic life) that a widow may ascend the funeral pyre after her dead husband.

**Influence of Buddhism and Jainism:**

The influence of Buddhism and Jainism also needs our attention. The extreme ascetic tendency
set up by Buddhism had its natural reaction on society, and it restricted to no small extent the freedom of women. The general cry was to shun and avoid them and their influence. Woman came to be considered as the root of all evil and stories in Jatakas illustrating the snares of women and their untrustworthy character were devised as a means of warning men against their evil influence. Reference - Punnika Jatak Upanchani Jatak, Gahapati Jatak; Culladhanuggaha Jatak etc. Bodhisatva says - "cursed be the land where women rule supreme. And cursed the fool that bows to woman's sway".

Commentaries - Dayabhaga and Mitakshara:

There are many commentaries, out of these two are important - Dayabhaga and Mitakshara. Among the commentaries, we come across a commentary written by a woman called Laxmi-Devi. The genuineness of the authorship is open to question. The commentary Mitakshara practically was followed all over India except Bengal, while Dayabhaga was followed in Bengal. All the writers of Mitakshara school are in full agreement with the principle of inheritance. The
widows and daughters of a man who has no son can never claim more than a mere maintenance. The rules of the Smritis regarding the rights of these and other women have been restricted by them accordingly, and the wives, mothers, sisters and the rest are eligible only for a share of the property. However, Yajnavalkya has declared that in the cases where a father divides his property equally among his children, the married daughters have the right to inherit their share; but in that case they shall not take the share themselves, but hand it over to their husbands. The subject stridhana (स्रद्धन) has been thoroughly discussed by different commentators, they have all recognised women's right over certain kind of property - independent of their husbands.

Effect of Muslim rule:

Politically, from the beginning of the eleventh century the country came under the sway of Muslims. A new civilization with a different outlook upon life, especially regarding women, was knocking at the door of Hindu civilization. The conservative
Hindu society clung all the more to the old laws to preserve itself from the total destruction in face of the threat of a new foreign civilization. A tremendous attempt to adjust the old laws to the new times, is to be seen; and the commentaties, at this juncture, had to twist the meaning of the old laws to make them effective in the new situation. Thus simple law became complex and unintelligible. The position of woman, as gathered from these commentaries, is pitiable. Many of the older institutions, giving women greater freedom in society, are now abolished; and in their place child-marriage, polygamy, sati-right, seclusion of women and such customs that helped to stagnate the life of woman came into force.