

Dead Women Tell No Tale

by

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Abstract

Following the Mutiny of 1857, the transfer of power from the East India Company to the British Crown, the Queen proclaimed political sovereignty over India. The authority over the private family matters was now ceded to local religious authority. Most of the issues concerning personal matters were deemed to be religious while it was not entirely clear whether the laws that were recognized were religious in origin or were merely customs. Therefore, many of the customs were sanctioned the use of scriptural and textual authorities rather than situational or practical authorities. In 1858, the Indian Parliament passed legislation governing personal and family matters of Christian immigrants, Jews, and Parsis. The legislation was remarkably similar to that enacted in England and was based on the judicial proceedings and judges in England. This created battles between British interests and native elites focused on the status of Indian women and matrimonial rights. The second half of the nineteenth century became a battleground to remold the Indian family law within a Western model. The legitimacy of the reforms for the English population at home was “civilization” of native colonized by initiating reforms which represented the enlightenment spirit of the Britishers.

The tussle over the political power between native elites and Britishers was fought on the backs of Indian women. The elites were mainly concerned with the degraded position of Indian women. At home, British feminists identified themselves with the cause of Indian women and profoundly wanted to relieve Indian women of the horrors of their

subjugated state. British feminists claimed that they better understood the condition of Indian women

Introduction

In the British Raj, the social stratum of Indian women was largely dependent on men. Religion played an important role in influencing the opportunities of education and employment for women. As Britishers came to India with western ideologies and thoughts, it influenced a lot of Indian men and women to do reforms in society. From Rammohan Roy to Ishwar Chandra Vidyasagar, Annie Besant, Sri Hari Singh Gour made valuable contributions in helping the advancement of Indian women's personal and mental growth. British officials were amazed by the evil practices of sati, female infanticide, devadasi system but they were reluctant to ban such practices as they feared, this may affect their relations with the upper caste Hindus, the *Brahmins*.¹ But with the passage of time and Britishers occupying more territories, the policymakers introduced reforms in the society and one of the most important ones was the ban on the barbarous practice of Sati.

The Sati as the practice of widow immolation continues to be a controversial topic and is still prevalent in isolated parts of India. The word 'Sati' itself is much debated for its interpretation. The term in Sanskrit means 'a virtuous woman' and it is derived from sat meaning 'truth', 'eternal' or 'goodness'. The term refers to a practice of self-immolation of a wife on her husband's funeral pyre or to the wife of Shiva. Sati was banned by Governor-General of India Lord William Bentinck by enacting the Bengal Sati Regulation of 1829. The ban which was extended to the whole country is credited with bringing an end to the practice of Sati in India. It was the first major social reform legislation done by the British in India. Even after about one and half centuries, a young, educated woman was burned on the funeral pyre of her husband in Rajasthan.² This brutal immolation caught the nation's attention and of international media. Under the pressure of people who were against the practice of widow immolation, the state government promulgated the Rajasthan Sati

¹ H.T. Colebrooke, Duty of a Faithful Widow from Asiatic Researches, Vol. IV, Miscellaneous Essays at 200-205

² Indian Express, 'India's last known case of sati: 'She ceased to be a woman... was a Goddess' at <
<https://indianexpress.com/article/india/she-ceased-to-be-a-woman-was-a-goddess-6016915>>

(Prevention) Act, 1987. A year later it became an act of the Parliament of India with the enactment of the Commission of Sati (Prevention) Act, 1987.³

This instance reminded us how an age-old and barbarous tradition is still being lauded and glorified as a sacrifice of religious bliss. There are several suttees that still happen in this modern world in isolated parts of the country.⁴ To understand widow immolation as a practice in totality it is very important to analyze this complex practice.

Women's Rights in Colonial India

Pre-colonial India was characterized as an agrarian society in which a very strict but often diverse custom developed by multiple tribes and castes.⁵ Multiple tribes and castes crossed religious lines thereby creating a heterogeneous society. While some of the tribes followed Smritis or commentaries, developed over the centuries to govern marriage and family relationships, some were not governed by commentaries but custom laws.⁶ The lower castes and the Dravidian region laws were more liberal towards women than the Brahmanical-Aryan customs because women engaged actively in productive labor. The experience of colonial rule in the early decades was difficult for Britishers as the customary laws set India apart from other British colonies. In India, it was difficult to understand the pluralist nature of culture and religious customs. With the codification movement in the 1800s, many castes and tribes that were traditionally outside the caste or Varna system were brought into the Hindu fold. The unification and reform law introduced by colonizers was a result of the negotiations with the elites. Following the canonical Hindu law, the Muslim political leaders wanted to unify the Muslim community and this process of unifying was simpler because of the existence of a written code and a text that could be followed as the general law.⁷

³ Commission of Sati (Prevention) Act, 1987 at

<<https://www.indiacode.nic.in/bitstream/123456789/1814/2/A1988-03.pdf>

⁴ See, Los Angeles Times, 'On India's back roads, sati revered' at <<https://www.latimes.com/archives/la-xpm-2006-dec-10-adfg-widows10-story.html>>

⁵ Flavia Agnes, 'Law and Gender Inequality: The Politics of Women's Rights in India (1999) at 12

⁶ Ibid at 13-14

⁷ Ibid at 27

Following the Mutiny of 1857, the transfer of power from the East India Company to the British Crown, the Queen proclaimed political sovereignty over India. The authority over the private family matters was now ceded to local religious authority.⁸ Most of the issues concerning personal matters were deemed to be religious while it was not entirely clear whether the laws that were recognized were religious in origin or were merely customs.⁹ Therefore, many of the customs were sanctioned the use of scriptural and textual authorities rather than situational or practical authorities. In 1858, the Indian Parliament passed legislation governing personal and family matters of Christian immigrants, Jews, and Parsis. The legislation was remarkably similar to that enacted in England and was based on the judicial proceedings and judges in England.¹⁰ This created battles between British interests and native elites focused on the status of Indian women and matrimonial rights.¹¹ The second half of the nineteenth century became a battleground to remold the Indian family law within a Western model. The legitimacy of the reforms for the English population at home was “civilization” of native colonized by initiating reforms which represented the enlightenment spirit of the Britishers.¹²

The tussle over the political power between native elites and Britishers was fought on the backs of Indian women. The elites were mainly concerned with the degraded position of Indian women. At home, British feminists identified themselves with the cause of Indian women and profoundly wanted to relieve Indian women of the horrors of their subjugated state. British feminists claimed that they better understood the condition of Indian women¹³. Ironically, the British feminists invoked the images of Indian women as victims in order to further their won claims for suffrage and political rights.¹⁴ They claimed that by acquiring political rights (right to vote) at home, they would be able to relieve their Indian sisters’ ‘suffering’ and ‘uplift’ their conditions.¹⁵

One of the early courses of making reform in Indian society was the introduction of Age of Consent Act in 1891 --- law governing the age at which adolescents can legally consent to sexual

⁸ Ibid at 59

⁹ Ibid at 41

¹⁰ Ibid at 64

¹¹ Ibid at 65

¹² Himani Bannerji, ‘Age of Consent and Hegemonic Social Reform, in Gender and Imperialism’ at 21

¹³ Antoinette Burton, *Burdens of History: British Feminists, Indian Women, and Imperial Culture*, 1865-1915 (1994) at 17

¹⁴ Ibid at 15

¹⁵ Ibid at 10

intercourse. The bill was also introduced in the British parliament but the law arose in England and India in the context of prostitution and child marriage respectively. In England, prostitution threatened the security of the middle class and in India, child-bride was an upper-caste phenomenon¹⁶. The bill was spurred by the death of a child bride, Phulmoni Dasi, of eleven who was killed by brutal and forceful intercourse with her thirty-five-year-old husband. While the state was introducing the ‘possibility’ of marital rape law in India when England itself did not recognize it as a crime¹⁷. The indigenous population pointed out, sexual intercourse within marriage is not rape. The law was never seriously enforced as it was argued by the native population such as Sir Romesh Chunder Mitter that it interfered with the rights of the native male over his wife. The law raised the age of consent by mere two years from ten to twelve, the colonial authorities did very little to protect young girls from the barbaric custom. The concern here was not for the welfare of the child-bride in India as legislation against child marriage was not passed until 1929.

The definition of marriage in India and England is different. In English, one married couple takes up residence in their own home and sets about their collective life. On the other hand, in India, the bride leaves her father’s home and joins her husband’s house that includes her husband’s parents, brothers, and their wives and children. Fathers would often pay a significant bride price on the behalf of their daughter. In England, the widows were historically entitled to one-third of all land owned by the couple and as the couple would have taken up residence apart from the husband’s parents, the widow’s ability to resist pressure from her husband’s parents would be greatly enhanced.¹⁸ In India, however, the widow would continue to live with her husband’s family, especially if they had children. The obvious incentive to keep the widow joined to husband’s family was to retain control over the deceased husband’s property.¹⁹ The unusual situation created for a child bride after her husband’s death with no children posed a significant threat to the family unit. In England, child marriage was not considered a problem as vast majority of the population married in their twenties. Even after the differences between the Indian joint family and the English

¹⁶ Charles Heimsath, ‘Indian Nationalism and Hindu Social Reform (1964) at 161

¹⁷ Meredith Borthwick, ‘The Changing Role of Women in Bengal: 1849-1905’ (1984) at 126

¹⁸ Varsha Chitnis, Danaya C. Wright, ‘The Legacy of Colonialism: Law and Women’s Rights in India (2007) 64 Wash. & Lee L. Rev. 1315 at 1332

¹⁹ Ibid 1333

independent martial unit, the colonial authorities simply imported English laws on widow's property into the late-nineteenth century.

While Britishers did a commendable number of reforms in Indian patriarchal society, the problem of not accessing the different needs of the two countries often resulted in the failure of the motive of the law. In England, abortion had been heavily regulated and restricted within the predominantly Christian ideology, in India, the abortion advocates never reached the feverish level of debates found in England and America. The Indian Parliament simply adopted the same law that had been followed in England which was created out of a different context to deal with specific needs. The motive behind the introduction of abortion law was not to pit women's rights against fetal protections, but rather to present abortion as social policy and population control. And as a result, the law has proven unable to deal with the unique situation in India of ingrained patriarchy that favors male children over a female ones. The issues that attracted the colonial authorities' attention were widow remarriage, child marriage, right to property, abortion, et cetera. The sad irony, however, is that the reforms were largely brought in not because Britishers wanted to improve the degraded position of Indian women but these reforms back at home represented the enlightenment spirit of the British, the harbingers of progress and modernity.

Because of space limitations, the researcher will focus only on the barbaric custom of widow immolation or sati.

A Barbarous Act

The word suttee or sati is a Hindu practice of burning a living widow with the corpse of her husband. Sati has a Sanskrit origin meaning a good and true wife. The term is derived from the original name of goddess Sati, wife of Lord Shiva, who self-immolated because she was unable to bear her father's humiliation of her husband. Sati is of two types, anumarana, widow burns herself with some relic of her husband (cloths, ornaments, etc.) and sahamarna (dying together), widow burns herself with the husband's dead body. While the application of anumarna is European, the latter is Indian. Sati cannot be explained without relating it to the social life of Hindus and tradition. While the custom was practiced in ancient times in Europe, Central and Western Asia, and the Far East, the origin of sati is lost in the midst of antiquity.²⁰ The origin of sati is often complemented

²⁰ Edward Balfour, Cyclopedia of India, II, article, "suttee"

to Vedic text.²¹ According to Wilson²², there is no authority in the Vedas nor in the laws of Manu. It is true that there are funeral hymns in Rig-Vedas but the case of recommending support by these hymns for the custom of sati by fraudulently changing the last text of the stanza²³ is itself a void argument. The evidence that Vedas does not support the prevalence of widow immolation doesn't mean that the practice was completely non-existent or unknown. References to the incidents of sati occur in Mahabharata.²⁴ The fact that widow immolation was practiced in several civilizations in different parts of the world geographically separated from one another shows a general human tendency to adopt barbarous rites in the early stage of civilization. The practice of sati in India was more of a practice that became a custom with the passage of time. Sati was mainly confined to kings, nobles, and the upper class of society among the Kashtriyas with whom the burning of women was a point of honor. Fighting was very common in those days and to save themselves from falling into the 'clutches' of the enemy, the women preferred to die on the funeral pyre.²⁵ With the passage of time, the Brahmins also adopted the practice. The practice did not enjoy a place in the Hindu code but the general notion of prescription that it has persisted among Hindus for centuries led it in continuation. The practice encouraged by the Brahmins was established firmly and became an integral part of the Hindu lifestyle in the medieval period.

A large number of women were burnt in the South Indian states of Vijayanagar and Canara. In 1611, four hundred wives burned themselves with the Naik of Madura.²⁶ The Muslim rulers in the northern part of the country found the practice strange but did not take any measures for prohibiting sati. The general character of rulers was reluctance to interfere in the matters of other religions but permission had to be sought by the widow before burning, although it was invariably given. Akbar discouraged the practice of sati but was unable to prevent them in all cases. The accounts of William Hawkins when he visited Jahangir noted that the Emperor disallowed the practice by force and by promises of gifts to win them over.²⁷ When Britishers encountered the practice they were

²¹ P.V. Kane, History of Dharmasastra, Vol II, Part 1

²² H.H. Wilson, Miscellaneous Essays and Lectures on the Religions of the Hindus

²³ As done by Radhakanta Deb, where he replaced the word agre to agneh.

²⁴ V.N. Datta, A Historical, Social and Philosophical Enquiry into the Hindu Rite of Widow Burning (1998) at 3

²⁵ Ibid at 8

²⁶ Ibid at 9

²⁷ Ibid at 12

clueless and followed the Mughal example of not banning the practice but at the same time putting hurdles.

British Policy on Sati

The Britishers were quick to realize the complex social system of Indian society and left the Hindus and Muslims free to follow their religious customs and practices. They made their policy to encourage traditional learning among Hindus and Muslims. The belief that every society has its organic laws, customs, and practices were affirmed strongly by Pitt's India Act of 1784. The British officials had hardly any direct communication with the Indian public and thus understood little of the novel practice. They were familiar with slavery but not with sati.

It was in 1805 that the first attempt was made by the Government to examine the question of sati. The Court of Nizamat Adalat formulated the suttee policy and the necessary condition of committing sati was that the women must have an independent and uninfluenced decision to commit it. The circumstances which barred a widow from performing immolation were if she is pregnant, under puberty, in a state of uncleanness, a mother of an infant, and in stupefaction due to the administration of drugs.²⁸ It took the government seven years to accept the recommendation made by the Court of Nizamat Adalat. The government didn't want to upset the native and upper caste population. So, it created a distinction between 'legal' and 'illegal' sati. The Government circular thus ordered its authorities to allow 'legal' sati and to prevent an 'illegal' sati as one when a widow committed sati under compulsion or was intoxicated with drugs or was pregnant or had a child under three years. One of the significant results after the circulars was the decline in 'illegal' sats because of the direct interference by the police officials. It was difficult for the authorities to keep a check on all 'illegal' immolations as evident from the fact that people would go over to the suburbs of Calcutta to commit immolations there. Also, the circular didn't contain certain types of sats committed such as the women other than wives who burnt themselves. According to an estimate, until 1816 the officials only managed to prevent ten illegal immolations out of a total of 400.²⁹

²⁸ Ibid 24

²⁹ W.H. Sleeman, *Rambles and Recollections*, Vol I at 104

YEAR	NUMBER OF SATIS
1815	378
1816	442
1817	707
1818	839

It would appear from the table above, there is an increase of around 122 percent in the number of immolations reported from 1815 to 1818. This increase set the authorities into thinking about the sati policy. The government's policy of 1812 proved to be an unsuccessful attempt by the authorities due to the inherent defects of the orders. The government, thus, decided to revise the circular orders of 1812. This was the second important step taken by the British authorities in the history of the abolition of sati. The policy of 1817 was designed to remove the defects of the circular orders of 1812, therefore, clarifying the confusion created by the order of 1812. The confusion was regarding the terms like 'state of uncleanness', 'infancy of child' which were never defined in the orders. The policy also introduced certain types of 'illegal' immolations such as widow under fifteen years or brahmin widow not to burn with any other pile et cetera.³⁰ While the policy of 1817 was more comprehensive and detailed than that of 1812, it lacked coercive force. In other presidencies, the frequency of widow immolations was considerably far less than those in Bengal. The presidencies of Bombay and Madras showed no great enthusiasm in introducing reforms like that of Regulations of 1812 and 1817.

Missionaries and Sati

The influence of the Cristian missionaries in the abolition of sati was indirect but it did play a significant role in changing and influencing the government's decision. The main object of the missionaries was to 'save' souls by diffusion of Christianity. The Baptist missionaries believed that the rite of sati and other practices like child marriage, infanticide had a sanction of Hindu religion. These practices excited them and they started doing research by collecting statistical data

³⁰ Datta (n 1) at 30

on sati. They thought that the only hope for Hindus to save themselves from the degrading state was to embrace Christianity. That is why they started spending their money and time on the diffusion of Christian knowledge among native Indians by exposing the ‘inferiority’ of Hindu religion.³¹

The Government was impressed by the Baptist missionaries’ role in collecting authentic information on immolations from eye-witness accounts. From 1814 onward the Government began to follow the practice of collecting statistical data on sati and preparing annual reports. The missionaries tried to prevent women from burning themselves from personal contacts. They didn’t suggest any radical step to the Government, rather, they followed the guidelines mentioned in the regulations. They wanted to reduce the number of satis by following the circular laid down by the Government.³² The missionaries did not wish to go against the Government while implementing the policy.

The main contributing factor of the missionaries was the propaganda value spread by them for over three decades. This influenced and caught public attention to the barbaric nature of the practice. Their efforts resulted in arousing public sentiment against the practice.

Abolition of Sati

The position about the policy of sati before the arrival of William Bentick was sluggish, rules existed in presidencies but in reality, they didn’t work out. There was hardly any Governor-General who did not think the practice as grotesque but none of them took any positive measure to prohibit it. The appointment of Bentick as Governor-General, in 1828, gave momentum to the campaign against sati. While the policy of 1812 promulgated by the Government of Bengal was strongly criticized because it led to an increase rather than diminish the number of immolations by giving the practice a stamp of legality, Bentick had some lessons to look upon. Another reason for not implementing harsh measures other than the policy of non-interference in Hindu customs was that the East India company could not afford to embroil itself in any aggressive war. In the twenties of the nineteenth century, the company’s total expense over the income amounted to nearly fifty

³¹ Ibid 74

³² Meenakshi Jain, ‘Evangelicals, Baptist Missionaries, and the Changing Colonial Discourse’ at 194

million pounds, Bentick's administration was free from wars and political turmoil and therefore it was the perfect time in inaugurating an era of reforms in Indian society.

Bentick had decided on the abolition even before his arrival in India. He often wrote letters to Lords expressing his responsibility to abolish the practice if appointed as Governor-General of India.³³ Bentick wanted to find out whether it was in the public interest from a military angle to abolish sati. British rule in India was being continued with the help of Indian troops as Indian sepoys contributed a great portion to the military power. Therefore, he consulted with forty-nine highly experienced military officers on the effect of abolition on their men. Twenty-four supported immediate abolition and only five opposed any change.³⁴ Bentick also consulted H.H. Wilson and Rammohan Roy.³⁵

Finally, the barbarous practice of widow immolation in India was banned on 4 December 1829 outlawing the regulations of Bengal. Bentick had not been eighteen months in India when he abolished Sati. In 1861, after the control went to the British Crown, Queen Victoria issued a general ban on the practice of Sati throughout India.

Sati and State

Even after banning sati by the British Government in 1829 and subsequently, by independent India in 1956 and 1987, incidents of sati occurrence are reported from various parts of the country. It may look paradoxical that in the 21st century when education is developing, we should witness concrete attempts being made to glorify archaic customs. The case of sati in 1987 at Deorala in the Sikar district of Rajasthan provoked a fierce controversy in the country. Roop Kanwar, a young and educated woman was burnt on the funeral pyre of her husband in presence of about 3,000 spectators. Following the strong public opinion mobilized against the practice of sati, the State government the Sati (Prevention) Act made glorification of sati a crime, the appointment of special courts, enhancement of punishment for abetment, and the power to seize funds and properties of

³³ Ibid 204

³⁴ Ibid 205

³⁵ Datta (n1) at 93

those who indulge in the adulation of sati. Under the 1987 Act, the woman who attempts sati is liable to punishment of six months imprisonment, and those who either force or encourage her to commit the act are treated as abetting suicide. The Representation of the People Act, 1951, was also amended to disqualify any person convicted under it for standing for election.

The act of widow immolation is not seen in the larger context of socio-historical circumstances. The act regards the victim of sati as a criminal and could be awarded a punishment of six months. Doing so, the act ignores that a woman even when she is willingly committing sati, is a victim of sociological circumstances. While the act holds the ones responsible for encouraging widow immolation, a crime of this sort occurs because of social pressures rather than the acts of a single person or a small group of people. The act prohibits glorification as a punishable offense, the term 'glorification' is rather ambiguous and has a loose definition. After the case of Roop Kanwar, she has been elevated to the status of a Devi and the Mahasati Roop Kanwar Committee collected a fund amounting to 10 Lakh rupees to build a temple to perpetuate her sacred memory. Could this qualify as 'glorification' of sati?

In 1303, Rani Padmavati 'protected' the honor of the Rajputs after the siege of Chittor by committing jauhar³⁶ or jumping into a pit of fire to avoid getting raped and captured by the invading army. Even as the practice of Jauhar no longer exists, Padmavati's Jauhar is recognized as more folklore than fact. One of the biggest celebrations of the year is the 'Jauhar Mela' organized in Rajasthan's Chittorgarh. The celebration is held in the honor of sacrifices made by Rajput women to 'uphold' their clan's honor. Could this qualify as 'glorification' of sati?

The position of women is certainly less unhappy than before. Some of them are occupying high representational positions in the country but a large number of women are still dependent on men. India has been dominated by the mental sloth of the exponents of its past heritage. The Hindus have not sifted their tradition and have accepted all things whether good or bad. There is a need for an alarm bell to awaken them so that they can introspect the damages caused by the barbarous traditional faiths and customs.

³⁶ The term Jauhar is the loose Arabic translation of the Persian word jivhar, which means gem, jewel and merit.