LAW AND THE MARRIAGE OF HINDU WIDOWS: A ŚĀSTRIC DEBATE IN 19TH-CENTURY BENGAL

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Abstract

Since the ancient time in India, implication of the scriptural texts (*śāstras*) and their interpretations has often been appreciated to resolve different issues. But the tradition of *śāstric* proclamations is not configured in simple approach; rather, the complicated pattern of it sometimes creates various kinds of contradiction and contrast. As a result, lots of *śāstric* debates have taken place in the framework of social, religious and political matters of this country. In this essay, the focus will be on a *Dharmaśāstric* debate that observed a specific socio-cultural question of 19th-century Bengal, as well as India. In 1855, the first petition for the Bill "to remove all legal obstacles to the marriage of Hindu widows" (Vidya 1885: 2) was put by Iswarchandra Vidyasagar, who found the situation of Hindu widows as cruel and mischievous. But the larger portion of the then Hindu society, led by some very powerful personalities like Raja Radhakanta Deb Bahadur, stood dead against the Bill, and argued that the Hindu *śāstra*s strongly prohibit the remarriage of widows. To refute opponents' views, as well as to prove his own opinion valid and legitimate, Vidyasagar, as a representative of liberal Hindu society, interpreted the *Dharmaśāstra*s from a different perspective and brought forth some brilliant evidences from the same *śāstra*s.

The paper would discuss on the argumentative pattern of the mentioned debate and configure how much influential was it in respect to pass the Act XV of 1856. With the reference to the petition and counter-petition of the Bill, how did different parts of Hindu society of 19th-century India react/reciprocate and what was the standpoint of the colonial ruler regarding this very discourse will also be in the discussion.

Key Words: Hindu widow remarriage, 19th-century Bengal, Vidyasagar, *Dharmaśāstra.*

Introduction

On 4 October 1855, Iswarchandra Vidyasagar, the famous Bengali social reformer and educationalist in British-ruled India, put a petition to the Legislative Council of India appealing to pass a law "to remove all obstacles to the marriage of Hindu widows" (Vidya 1885: 2). Before that, the second marriage of Hindu widows, with few exceptions[1], was not in practice in the then Hindu society. Due to the early marriage and frequent practice of polygamy, especially among the high castes, the female children often had to accept the widowhood, sometimes even "before they can speak or walk" (Vidya 1885: 1). As a result, they had to carry out a very tough exercise of celibacy and undergo through other social rejections for the rest of their life. The prohibition for the remarriage of Hindu widows became a "social habit" (Vidya 1885: 1) for the orthodox Hindus in 18th-19th centuries which as mentioned by the petitioners for the Bill was the "cruel, unnatural, immoral and mischievous" (Vidya 1885: 4) attitude towards women. To incapacitate the Hindu widow remarriage invalid, 19th-century colonial Bengal witnessed a socio-cultural movement that involved a multifaceted contest.

A general notion, commonly existing then, was that the Hindu *śāstra*s, purposely the *Dharmaśāstra*s[2], place some strong injunctions against the remarriage of widows. In a society where religion and customs run interweaving each other, it is really challenging to introduce a new law, especially if it stands dead against the long experienced customs. Therefore, a great conflict occurred in 19th-century Bengal, where the basic debate was formulated focusing on some significant questions. First, do the Hindu *śāstra*s truly put embargo on the widow remarriage? Is any other interpretation/ view of those scriptures possible? Secondly, would the widow remarriage bring some betterment of the individual as well as collective life of the society? And lastly, does the whole debate require the attention of the State administration, or is it purely a fact of social consideration only?

Concentrating on those points, the whole affair can be sketched by a three-armed configuration. In the Hindu society of Bengal a distinct intellectual polarization was originated. Some personalities stood in favour of the Bill, and some against the same. These two contrasting opinion-possessors constructed the two opposite edges of the diagram. As the matter turned out to be related to the legislation of colonial empire, the third arm of the figure was obviously of the British ruler who passed the Act XV of 1856. In this particular socio-

cultural and legal context, a certain kind of equation was being formulated among those three parties. The current paper tries to explore that very structure, addressing the mentioned questions, with references to the arguments of the *śāstric* debate and the legal petitions, put against and for the mentioned Bill to pass the act of Hindu widow remarriage.

Attempts before Vidyasagar

The beginning of the discourses regarding Hindu widow remarriage can be traced in early 19th-century Bengal. The *Atmiya Sabha* had been conversing on the social problems since its beginning; the injunction against the widow remarriage was identified as a major one. In the meeting of *Atmiya Sabha* of 1819, it is recorded "…the necessity of an infant widow passing her life in a state of celibacy, the practice of polygamy and of suffering widows to burn with the corpse of their husband, were condemned" (quoted in Ghosh 1965: 58). In the same context, some logical arguments were also raised in the first issue of *Bengal Spectator*, the printing-voice of Young Bengal Society, in 1842 (Basu 1993: 17). Before Vidyasagar's systematized attempt, several isolated and collective endeavours took place, but most of them failed to attain success. The surprising one was of Smārta Raghunandan Bhattacharya[3], a famous Hindu law-maker of 15th-16th-century Bengal. Even being a strict follower of the *Dharmaśāstric* tradition, and an authoritative personality to preserve the Hindu law system in the society, he resolved that his own widowed daughter should remarry (Vidya 1885: 18). Some more evidences of the similar kind of ventures were exemplified during the first reading of the Bill in the Legislative Council. One of them, whose attempt seemed to have been nearly successful, was Raja Rajballava of Dhaka. He acquired a *vyavasthā* or law statement from a large body of Hindu Pundits, but ultimately did not achieve his goal. Name of the Chief of Kotah also comes under the list of unsuccessful efforts (Vidya 1885: 18).

Two decades before Vidyasagar's legal petition, a Maratha Brahmin, the son of the minister of a late Raja of Nagpur, wrote an essay declaring the injunction against the remarriage of widows as contrary to Hindu *śāstra*s. There he advocated for "the general adoption of a contrary custom" (Vidya 1885: 15). One incident that produced an individual achievement to some extent was mentioned in the first reading of the Bill; it was taken from Thomas Strange's[4] work *Elements of Hindu Law* (Vidya 1885: 18). There it was stated that

a large assembly of *Pundits* in Poona gave permission to a widow daughter of a high caste Hindu fellow to remarry and that was acted upon. A similar case took place in Bengal also. Babu Syamacharan Das of Calcutta had a great desire to arrange the remarriage of his daughter, who had become widow since her age of eight or nine only. The Pundits gave a verdict that the girl can remarry only if she is a virgin. Quoting the *Manusaṃhitā*[5], one of the most ancient and influential texts of *Dharmaśāstric* tradition they specified the condition of being *akṣatayonī* (virgin) for allowing the girl for the second marriage (Vidyasagar 1895: 7-11) Shockingly, most of the *pundits*[6] who prepared and signed the *vyavasthā* strongly stood against Vidyasagar when he tried to make Hindu remarriage valid and legalized. Though the *pundits* gave permission in that particular situation, yet it cannot be treated as the threshold of recognizing Hindu widow remarriage as a regular custom. Das's incident was a specific case, where probably the *pundits* were bribed in a large scale to put off the obstacles; it did not licence all widows to perform that. One more point that becomes significant while arguing for and against the matter is the question of virginity of the widow. Vidyasagar's endeavour was to establish a universal custom for the Hindu widows irrespective of the question of virginity which was, in 19th century, not a simple task at all.

Arguments from Hindu *śāstras*

It was definitely Vidyasagar who molded a social "agitation" (Vidyasagar 1885: 7) to a full-fledged movement, and finally led towards reaching the legal validity. In this regard, why did the previous attempts come to the unsuccessful conclusions — is the notable question. In the first reading of the Bill that very question was raised in the Legislative Council and discussed:

> It was true that all these attempts had failed. But why had they failed? We know that a caste or any number of castes can introduce any such change of custom if they pray. But to do so, there must be a great majority in favour of the change. Now we know that it is the nature of all reforms of this sort to be gradual; to begin with a minority, who, by argument and example in the course of time, win the majority over to their views. For this reason, heretofore, the minority have been powerless in the hands of the majority who hold to the ancient custom which rules the administration of the law to all (Vidya 1885: 18-19).

Therefore, it can be said that all the previous efforts, though apparently unproductive, were actually in the process of building the

situation in favour of widow remarriage and that finally led towards the legal approval.

At the beginning of the movement, Vidyasagar had to face different kind of difficulties from his opponent party. Some public debates were being organized in Bengal, especially in Calcutta; in the early decades of 1853, at least three gatherings were found that discussed on that very controversy that whether Hindu system supports the remarriage of widows. There, Vidyasagar put forth his arguments, though it was not accepted by the orthodox Hindus. On 29 October 1853, a debate was held in place of Raja Radhakanta Deb, a very influential intellectual of the then Hindu society; there it was almost admitted that widow remarriage is permissible by Hindu *sāstra*s. But thereafter, most of the *pundits*, who sustained Vidyasagar's opinion, stood against him. Among them the strongest opposition came from Radahakanta Deb himself. (Basu 1993: 18)

Eventually, the debate was getting the shape of a social clash, where the newspapers and journals actively took part into[7]. Vidyasagar had a presumption that he would have to confront a tough resistance. He declared his supposition in his petition very clearly:

> …it [widow remarriage] might shock the prejudices, of those who conscientiously believe that the prohibition of the marriage of widows is sanction by the Shastras, or who uphold it on fancied ground of social advantage (Vidya 1885: 2).

Vidyasagar placed a world-wide picture of widows in contrast to that of the Hindu society: "That such marriages are neither contrary to nature nor prohibited by law or custom in any other country or by any other people in the world" (Vidya 1885: 2). In the petition, Vidyasagar mentioned why and how the widows of Hindu society had to accept the painful life; in the first reading of the Bill it was also illustrated how much misery they had to go through. But Vidyasagar realized that neither any humanitarian ground nor the contrasting picture of other communities/countries would create any sympathy in public, since, in Indian scenario, the most effective sources that are always being recognized as the authority to maintain the societal as well as religious structure are the *śāstra*s. Textual references are so powerful that to contradict those the only possible way is to find out something supportive from the same scriptural texts or at least from the similar kind of texts. One more drawback remained at that time – the scriptural texts were available mostly in manuscript form. The common people hardly had any direct access to make sure whether the heads of the society were representing the *śāstra*s truly; they had

to depend on the verdict of upper class Brahmins. This circumstance made Vidyasagar understood that to achieve public support he has to bring forth what the *śāstra*s actually proclaim. With that aim in mind, he published two Bengali 'pamphlets' (Vidyasagar 1864: II) entitled *Vidhavā vivāha pracalita haoyā uchit ki nā* (Whether marriage of widows should be in practice) in 1855. Again to make the British ruler aware what the Hindu *śāstra*s prescribe, he translated those two Bengali pamphlets into English under one title *Marriage of Hindu Widows* (Vidyasagar 1864: II; Bhattacharya 2019: 34). In these pamphlets, Vidyasagar illuminated the *śāstric* view, which in his words was the "true interpretation of Hindu Law" (Vidya 1885: 1).

It was on 17 March 1856, under the leadership of Radhakanta Deb, that 36,764 signatories put a counter petition to the Legislative Council portraying why the remarriage of Hindu widow has been counted as a prohibited custom. In this regard, the pertinent question is what are the injunctions prescribed in Hindu laws that prohibit the remarriage of Hindu widow, and more significantly, what are those pieces that the opponents put in their counter petitions to the Legislative Council? Though the debate consists of a number of arguments, both in favour and against, but our discussion will be limited to the prominent evidences only. While arguing against the Bill the opponents put forth the following *sastric* injunctions:–

1. *Yajurveda*'s *Taittiriya śākhā* states that a man can marry two wives but one female cannot marry two husbands, like round the sacrificial post two cloths can be tied, one cloth cannot be tied round two posts (Vidya 1885: 32).
2. The other prominent rules are from *Manusmṛti*.

   apatyalobhād yā tu strī bhartāramativartate/
   seha nindāmavāpnoti paralokācca hīyate/ /
   nānyotpannā prajāstīha na cāpyanyaparigrahe/
   na dvitīyaśca sāddhvīnāṃ kvacidbhartopadiśyate/ /

   (A widow who, from a wish to bear children, slights her deceased husband by marrying again, brings disgrace on herself here below, and shall be excluded from the seat of her Lord. Issue begotten on a woman by any other than her husband, is here declared to be no progeny of hers; no more than a child, begotten on the wife of another man, belongs to the begetter; nor is a second husband allowed in any part of this code to virtuous woman.) (*Manusmṛti*, chapter 5, verse 161-162; trans. Vidya 1885: 32)[8]

   pāṇigrahaṇikā mantrāḥ kanyāsveva pratisthitāḥ /
   nākanyāsu kvacinnṛṇāṃ luptadharmakriyā hi tāḥ//

(The holy nuptial texts are applied solely to the virgins and nowhere on the earth to girls who have lost their virginity.) (*Manusmṛti*, chapter 8, verse 226; trans. Vidya 1885: 36-37)

sakṛdaṃśo nipatati sakṛt kanyā pradīyate/
sakṛdāha dadanīti trīṇyetāni satāṃ sakṛt/ /

(Once the partition of an inheritance is made, once a damsel is given in marriage, and once does a man say 'I give'. These three are by good men done once for all and irrecoverably.) (*Manūsmṛti*, chapter 9, verse 47; trans. Vidya 1885: 37)

nānyasmin vidhavā nārī niyoktavyā dvijātibhiḥ/
anyasmin hi niyuñjānā dharmaṃ hanyuḥ sanātanam//
nodvāhikeṣu mantreṣu niyogaḥ kīrtyate kvacit/
na vivāhavidhāvuktaṃ vidhavāvedanaṃ punaḥ//

(By men of twice-born classes, no widow or childless wife must be authorized to conceive by any other than her lord; for they who authorized her to conceive by any other, violate the primeval law. Such a commission to a brother, or other near kinsman, is nowhere mentioned in the nuptial texts of the Veda; nor is the marriage of a widow even named in the laws concerning marriage.) (*Manūsmṛti*, Chapter 9, verse 64-65; trans. Vidya 1885: 33)

Therefore, the rules mentioned in *Dharmaśāstra* that were used against the Bill basically have two points to oppose – first, remarriage of a widow is not appreciated at all, rather it is mentioned by the *śāstra*s as invalid and non-virtue. The rituals prescribed for Hindu marriage is applicable only for the virgin girls (*kanyā*s). Secondly, the son begotten by the second marriage of a woman is illegitimate. Contrarily, the opponents did not fail to mention that the remarriage of a man is accepted/ authorized by the Hindu *śāstra*s.

Indian system of *Dharmaśāstra* has a very complex pattern. To counter the arguments of the opponents, Vidyasagar took the advantage of that very pattern where different kinds of interpretation of the same verse can be produced with different meanings. The *śāstric* injections that were being put forth frequently against the Bill were extracted from *Manusaṃhitā*, the authority of which in the contemporary era was directly denied by Vidyasagar. *Yājñavalkya-saṃhitā* enlisted names of 21 *ṛṣis* (seers), who authored the texts of *Dharmaśāstra*s. But all of those texts cannot be applicable in all time, rather should be observed according to the era, in Sanskrit, *yuga*s. While the *Manūsamhitā* is specified for the *Satya-yuga*, the *Dharmaśāstra* that accords the *Kali-yuga* is *Parāśarasaṃhitā*. Therefore, what the opponents mentioned as the *śāstric* evidence to prohibit the

Hindu widow remarriage is not applicable at all in the contemporary modern age. With this counter argument Vidyasagar quoted *Parāśara-saṃhitā/ Parāsara-smṛti* to validate his point of view.

> *naṣṭe mṛte pravrajite klīve ca patite patau/*
> *pañcasvāpatsu nārīṇāṃ patiranyo vidhīyate//*
> *mṛte bhartari yā nārī brahmacarye vyavasthitā/*
> *sā labhate svargaṃ yathā te brahmacāriṇaḥ//*
> *tisraḥ koṭyo'rdhakoṭī ca yāni lomāni mānave/*
> *tāvatkālaṃ vaset svargaṃ bhartāraṃ yānugacchati//*
>
> (On receiving no tiding of a husband, on his demise, on his turning an ascetic, on his being found impotent or on his degradation, under any one of these five calamities, it is canonical for women to take another husband. That woman, who on the decease of her husband observes the Brahmacharya (leads the life of austerities and privations), attains heaven after death. She, who burns herself with her deceased husband, resides in heaven for as many *kālas* or thousands of years as there are heirs on the human body or thirty-five millions.) (*Parāśara-Smṛti*, chapter 4, verse 26-28; trans. Vidyasagar 1864: 9; quoted in Bhattacharya, 2019: 38)[9]

So, the verses prescribed that in five exigencies women can remarry, viz.

1. on receiving no news of her husband for long
2. on husband's death
3. if the husband embraces ascetic life
4. if he is found impotent
5. on the degradation of her husband

In the same context, other paths that are offered to the widows are – either observation of *brahmacarya* or attainment of *satī-prathā*. Parāśara preferred these two options, i.e. *brahmacarya* and *satī-prathā* rather than to prescribe second marriage for the widows, but the *sati-prathā* became prohibited by the law of 1829. Vidyasagar surveyed the whole situation in his English translation *Marriage of Hindu Widows*:

> Thus, it appears that Paraśara prescribes three rules for the conduct of a widow; marriage, the observance of Brahmacharya and burning with the deceased husband. Among these, the custom of concremation has been abolished by order of the ruling authorities; only two ways, therefore, have now been left for the widows; they have the option of marrying or of observing the Brahmacharya. But in Kali Yuga, it has become extremely difficult for the widows to pass their lives in the observance of the Brahmacharya and it is for this reason that the Philanthropic Par*āś*ara has, in the first instance, prescribed marriage (Vidyasagar 1864: 9-10).

The challengers of Vidyasagar offered some more references from the Puranic texts also. Some of them opined that in early eras the widow remarriage might have an acceptance as common social norm, but in *Kali-yuga* it is forbidden. *Bṛhannāradīya Purāṇa* indicates the prohibition:

> *dattāyāścaiva kanyāyāḥ punardānaṃ varasya ca/*
> […] *imān dharman kaliyuge vyarjyānāhurmanīṣiṇaḥ//*
>
> (Giving away of a damsel, a second time, to a bridegroom, after she has been given to another […] are the Dharmas the observance of which has been forbidden by the Munis (sages) in the Kali Yuga.) (*Bṛhannāradīya Purāṇa*; trans. Vidyasagar 1864: 14)

Āditya Purāṇa echoes the similar injunction:

> […] *dattā kanyā pradīyate* […] *etāni lokaguptyarthaṃ kalerādau mahātmābhiḥ/ nivartitāni karmāṇi vyavasthāpūrvakaṃ budhaiḥ//*
>
> ([…]the gift of a girl already given[…]- these have been legally abrogated, in the beginning of the Kali Yuga, by the wise and magnanimous, for the protection of men.) (*Āditya Purāṇa*; trans. Vidyasagar 1864: 16)

The opponents are of the view that 'giving away of a damsel, a second time, to a bridegroom' indicates towards the injunction against Hindu widow remarriage in *Kali-yuga*. Those verses were refuted by Vidyasagar on the ground that the real purport of the passage has no concern with the remarriage of widow. "In former times, there prevailed a custom of marrying a damsel, who was been betrothed to a suitor, to another bridegroom when found to be endued with superior qualities" (Vidyasagar 1864: 14-15); this kind of practice is only being prohibited here. Again, in the case of contradicting verdicts, if the conflict were between *Smṛti* text and *Purāṇa*, the prescription of the *Smṛti* text would be more powerful and obligatory. As both *Āditya Purāna* and *Bṛhannāradīya Purāṇa* belong to the category of Puranic text, they are less recognizable while contradicting the *Parāśara-saṃhitā*, a treaty that comes directly under the *Smṛti* literature.

One more issue is deeply associated with the remarriage of a Hindu widow. That is the problem of the inheritance, or more specifically, the validity of the son begotten by the second marriage of the widow. *Manusaṃhitā* enlisted 12 kinds of son[10], among them first six have the right to inherit their parental property, but the rest six do not have. The son from a married lady who has previously been married to anybody else is called *Paunarbhava-putra*[11]. The opponents had the opinion that as Parāśara did not mention the

name of *Paunarbhava*, it implies that he had put an injunction against the second marriage of the widow. Vidyasagar's interpretation had a contrapuntal perspective; Par*āś*ara registered only three kinds of son in the Hindu society of Kali Yuga, viz. *Aurasa* (son of one's own), *Kṛtrima* (son made) and *Dattaka* (son adopted). Vidyasagar explained that among these three, the son begotten by the second marriage of the widow comes under the category of *Aurasa*, because, after accepting the widow remarriage legal or non-prohibited, the offspring by the remarriage of the widow should not be counted in some other classes (Vidyasagar 1864: 11; Bhattacharya 2019: 38-39). Here another very significant issue is also addressed and resolved; it is the matter of property inheritance. According to Manu the *Paunarbhava-putra* is not permitted to be heir his parental property, consequently, the son begotten by the widow remarriage would have no right in his father's property. But through considering the son of a remarried lady as *Aurasa*, the legitimacy of his inheritance became unquestionable.

Perspective of the Colonial Ruler

The endeavours to uplift the condition of Hindu widows was not restricted to the territory of Bengal; among different ventures all over India name of Jyotirao Phule (1827-1890), the famous social reformer of Maharastra, is most remarkable. He established an *ashrama* for the young widows and advocated the notion of widow remarriage. On the other hand, the *śāstric* evidences for the remarriage of widows did not make the orthodox Hindus convinced; rather the debate went on for several years, even after passing the Act.[12] Outside Bengal, from Ratnagiri, Satara, Ahmednagar, Secendrabad more petitions were given for the Bill. On the other hand, people from Poona, Surat, Thana appealed against the same. It is also notable that the number of the signatories against the Bill was much higher than who stood in favour,[13] but then also, the Bill was passed. Was there any impact of the *sāstric* debate on the procedure of passing the Bill? It is noteworthy here that Vidyasagar did not directly quote any evidence from Hindu *sāstra*s in his petition, though he clearly mentioned that there is no scriptural injunction. Contrarily, in some counter petitions, particularly put by Raja Radhakanta Deb Bahadur and Shriram Shiromani, several scriptural rules against the remarriage of Hindu widows were produced distinctly. But it is said that Vidyasagar submitted a copy of his English pamphlet *Marriage of Hindu Widows* to the British Indian Association for forwarding it to

the Colonial Ruler (Mitra 1902: 281-282; Bhattacharya 2019: 36). It was the translation of his two Bengali papers, entitled *Vidhavā vivāha pracalita haoyā ucit kinā*, where he elaborated all the *śāstric* evidences to abolish the painful customs of Hindu widows.

Now, while discussing on the role of the British ruler, the prerequisite is to determine whether the whole movement needed the active involvement of the State authority, or it could be sorted out only by the society. The question was very clearly focussed by Mahadeva Govinda Ranade (1842-1901), the member of Bombay Legislative Council, as well as judge of Bombay High Court. Being a renowned social reformer of Maharashtra, he strongly advocated widow remarriage. On 15 September 1885, Ranade asked for a Commission of Inquiry to fix the doubts and difficulties regarding widow remarriage. He suggested, "Such a Commission, composed of representative Natives and Europeans, on the model of the Education commission, will pave the way for practical suggestions" (Vidya 1885: xxii-xxiii). In this connection he clarified what should be the role of the State in such social movement. He stated:

> Individual liberty of action is no doubt a great force, but this liberty has its limitations imposed by the fact that no man's liberty should encroach upon the liberty surrounded him. Whenever there is a large amount of unredressed evil suffered by people who cannot adopt their own remedy, the State has a function to regulate and minimize the evil, if by so regulating it, the evil can be minimized better than the individual effort and without leading to other worse abuses. The state in his collective capacity represents the power, the wisdom, the mercy and charity, of its best citizens (Vidya 1885: xiii).

The British rulers were of the similar opinion that though it was a social question, yet the Legislative Council could do a justice.

Again, in the matter of property inheritance by the offspring, begotten by the remarried widows, involvement of the State authority is preconditioned. After conquering the battles of Plassey and Boxer, British East India Company achieved the power to collect the Dewani from Bangla-Bihar-Orissa and to deal with the civil cases. As a result, the cases related to property settlement used to come to the Dewani Courts. If this social movement comes to a positive conclusion, expectedly, the British would also have to solve the legal cases of inheritance related to widow remarriage, and without doubt, those would be more complicated than of the normal case.

A Select committee was formed consisting of James Colvile, Eliot, Le Geyt and J. P. Grant to look after the whole matter. The British ruler rarely entered the debate of the interpretations of Hindu

scriptures. It is probably because at the time of the early days of their colony, the foreign ruler did not have much knowledge about the Dharmaśāstric tradition of the Hindus that is required to answer that socio-cultural question. The two points that they raised to support the Bill are only the good moral and the public welfare. On 17 November 1855, in the first reading of the Bill it is argued:

> We do not know whether the court will enforce the interpretation of the Hindu doctrine which the petitioners [Vidyasagar and other liberal Hindus] presume that they will. But even if this question of law were really a doubtful point, he could not think the objection valid. He could not think that it would be right to sacrifice even a Hindu family to such objection (Vidya 1885: 10-11).

To explore the point of "extreme cruelty" (Vidya 1885: 12) that the petitioner referred to in their application, a paper was read out before the Council where the misery of the Hindu widows was elaborately illustrated – "Not only must she see no man, she must also avoid every approach to ease luxury, or pleasure" (Vidya 1885: 13). Grant attested the second point, i.e. immorality as "the strongest argument in support of the Bill" (Vidya 1885: 14). The most ungraceful consequences of early widowhood were prostitution, unwilling pregnancy and foeticide (Bhattacharya: 2019: 37). Even Vidyasagar addressed this problem without any hesitation in his pamphlet *Marriage of Hindu Widows*. As the supportive evidence to admit that in majority the young widows fall into vices, two writings were quoted before the Legislative Council – one by a British, and another from a Maratha Brahmin of Nagpur. From Ward's description it is found, "These young widows, being forbidden to marry, almost without exception, become prostitute" (Vidya 1885: 15).

Previously, in 1837, the matter of preventing the infanticide by allowing the remarriage of Hindu widows was taken up by the Indian Law Commissioner for consideration. Some scholars are of the view that it was the earnest attempt of the young Derozian that impressed the Commissioner to take the initiative (Ghosh 1971: 59). In reply to the circular of Grant, the Secretary of the Law Commission, H. B. Harrington, Registrar of the Allahabad Sudder Court, argued:

> The object of the proposed enactment is doubtless a most human one; but being directly opposed to the Hindoo Law, and calculated from the great importance attached […] to the due observance of that law, to be exceedingly offensive to the feeling of the people, the Court see great reason to question the expediency and policy of passing it. (quoted in Ghosh 1971: 59).

Moreover, the Madras Suddar Court highly discouraged the proposal mentioning it as a "dead letter" (quoted in Ghosh 1971: 60; Bhattacharya 2019: 37-38).

Though the mentioned venture of Legislative Council turned to an unproductive effort, the same point was raised once again with reference to the petition of Vidyasagar. Then the issue appeared before the administration as the "natural and necessary complement of the law for the abolition of the rite of Sati" (Vidya 1885: 21). The prohibition of Sati, passed in 1829, is a compulsory law, but the British ruler suggested the remarriage of Hindu widow would be "essentially permissive and permissive only" (Vidya 1885: 25).

Therefore, it is comprehensible that the British rulers were in support of the Bill, but at the same time, did not take the risk to judge the interpretation of Hindu *śāstra*s; they gave emphasis to the humanitarian ground to secure a safe position. J. P. Grant, the mover of the Bill, in the *Statement of Objects and Reasons to the Bill*, dated 17 November 1855, justified the Bill in a public-spirited ground:

> It does not pretend to say what is the right interpretation of the directions for conduct in respect of marriage in the text books; or which of the conflicting authorities ought to be followed by a Hindu. It will interfere with the tenets of no human being; but it will prevent the tenets of one set of men from inflicting misery and vice upon the families to their neighbours, who are of a different and more humane persuasion (Vidya 1885: 6).

After eight months, on 19 July 1856, the Bill was read for the third time and passed. Meanwhile, the Legislative Council received a number of counter petitions where it was clearly mentioned that the Act would be "an interference with the religion of the Hindus" (Vidya 1885: 73). Though it is evident that the societal pattern of this country has a deep association with the religious theory and practice, yet, Barnes Peacock, the judge of this particular legal case, denied that interconnection. Firmly he announced: "there was nothing in the Bill which would prevent any man or any widow from doing as he or she pleased. There was nothing in it which could compel any man to marry a widow, or any widow to remarry" (Vidya 1885: 73). That was the reason why the Act XV of 1856 was recognized as a permissible one, not an obligatory one. The Council did not make any direct judgement about the accuracy of the *śāstric* evidences produced during the debate – "we do not decide which is the orthodox opinion: it is not for us to do that" (Vidya 1885: 77). The point of view of the council was very much significant for the social as well as individual perspective: "If one Hindu widow believed

that her religion did not restrain her from re-marrying, why should the law restrain her because others of her community entertained a different opinion on the subject?" (Vidya 1885: 77) This statement recognized women as active subject, whose own willing would be the determining factor in the case of her remarriage. Again, somehow the Council, though in a very subtle mode, admitted that there is a possibility to procure some evidences in Hindu *śāstra*s that support the remarriage of Hindu widows. Moreover, the Council produced another possibility where again the provision of scriptural admiration is visible:

> If a Hindu widow should become a Christian, there would be no obstacle to her marrying again. Then, why should she not marry again while continuing in her own faith, if she believed in her conscience that the doctrine of that faith did not prohibit her re-marriage? (Vidya 1885: 78)

Conclusion

Not only in the knowledge system of India, but also in its socio-cultural scenario, authority of texts and their interpretations have been adored as one of the most prominent sources. Famous Sanskrit grammarian Patañjali (generally accepted as of 2nd century BCE) announced the implication of scriptural aphorism '*sabdapramāṇakā vayam*' (we follow the authority of words). Even to maintain the supremacy of scripture Indian tradition considers the *Veda* as the *apauruṣeya* (not authored by any person). But different interpretations of the same scripture, or different perspectives of the similar texts always make routes to present divergent views, and that is the beauty and inspiration of India spirit. To propagate different theories of philosophy this kind of differentiating interpretative representation of texts is approved as a common methodology, but for the *Dhramaśāstric* tradition, the debate has a practical feature too, as they are directly associated with the practice of social norms. In 19th-century India, the issue "to remove all obstacles of the remarriage of Hindu widows" (Vidya 1885: 3) had a multi-layered approach involving social, religious, intellectual and legislative corpuses. But all those had a common foundation – the whole affair was designed on the *śāstric* evidential arguments, without which the orthodox *pundits* would misleadingly designate a social welfare deed as an insensitive attitude of liberal Bengali people, who were the product of the then Western education. The British ruler placed himself in an apparently neutral position, where they went more for the logical argument than the scriptural one. Grant designated

the realistic approach of the issue by saying, "object in introducing this Bill was entirely practical" (Vidya 1885: 13). But it could not be denied that the inner current in the whole movement had a deep connection with the *Dharmaśāstric* assessments.

In Indian milieu, the primary meaning of *dharma* is duty, which has a dynamic outlook according to the changes based on time and necessity. *Manūsmṛti* defined *dharma* by:

> *vedaḥ smṛtiḥ sadācārah svasya ca priyamātmanaḥ/*
> *etaccaturvidhaṃ prāhuḥ sākṣād dharmasya lakṣaṇam//*
>
> (The *Vedas*, the *Smritis*, good conduct, and self-complacency of one's own, the wise call these four as the positive proofs of virtue.) (*Manusaṃhitā*, Chapter 2, Verse 12; trans. Dutta 1909: 37)

Hence, in the Dharmaśāstric tradition, *sadācāra* (good conduct) is counted as one of the four *dharmalakṣaṇa*s – it opens the trajectory towards the philanthropic approaches of social customs. To support the humanitarian ground, the proofs that were extracted from Hindu *śāstra*s with the verity or contemporaneity of interpretations by Vidyasagar certainly made the path smoother to pass the Act XV of 1856, though to settle the remarriage of Hindu widows as a normal custom without any hesitation, the Hindu society took quite a long time.

Notes

1. Among the low castes, remarriage of widows was commonly in practice. (Macnaghaten 1862: 60; Bhattacharya 2019: 33)
2. The scriptures that prescribe the duties/ customs/ norms to be practiced in the socio-religious life of Hindus.
3. He compiled and composed 28 digests of Hindu law and authored commentary on *Dāyabhāga*, a text on inheritance.
4. Thomas Strange (1756-1841) acted as Chief Justice of Supreme Court, Madras Presidency.
5. *sā cedakṣatayoni syāt…sā punaḥ saṃskāramarhat.*
6. The *pundits* who signed the *vyāvasthā patra* were – Kashinath Tarkalankar, Bhavashankar Vidyaratna, Ramtanu Tarkasiddhanta, Thakurdas Churamani, Harinarayan Tarkasiddhanta, Muktaram Vidyavagish, etc.
7. The newspapers and journals who stood for Vidyasagar were *The Hindu Patriot, The Citizen, Tattvabodhini Patrika, Sambad Prabhakar.* Those who stood against Vidyasagar included *The Hindu Intelligencer.*
8. Translation by Vidyasagar.
9. The meaning of the verses is taken from the petition against the Bill put by Raja Radhakanta Deb Bahadur.
10. See *Manusamhitā*, Chaper 9, verse158-176. Twelve kind of sons – *Aurasa* (a son of one's own loins), *Kṣeraja* (a son procreated on one's wife or widow by

another), *Datta* (adopted son), *Kṛtrima* (son made), *Guḍhotpanna* (son secretly procreated on one's wife), *Apaviddha* (taken and adopted), *Kānīna* (son before marriage), *Sahoḍha* (son born in the womb at the time of marriage), *Krīta* (son purchased), *Paunarbhava* (son of a remarried woman), *Svyamdatta* (son self-given), *śaudra* (son of a śudra).

11. *yā patyā parityaktā vidhavā vā svayecchayā/*
utpādayet punarbhūtvā sa paunarbhava ucyate//
(The son whom one's widow, or deserted wife, voluntarily gets protected on her person by her second husband, is said to be the *Paunarbhava* (lit. the son of a remarried woman) son of the letter. (*Manusamhitā*, chapter 9, verse175; trans, Dutt 1909: 341)
12. Bankimchandra Chattopadhyay wrote an article opposing the Act in the June 1880 issue of *Bangadarsan*, a famous Bengali monthly. (Mitra: 1902, 281; Bhattacharya, 2019: 36)
13. Forty petitions against the Bill signed by fifty to sixty thousand persons, 25 petitions in favour of the Bill signed by more than five thousand persons (Vidya: 1885: 57; Mitra, 1902: 296-297; Bhattacharya 2019: 37)

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