

The Rights of Parsi Women: A Study of Marriage and Divorce Laws in Parsi Personal Law (1830-1988)

Priya Kanojia*

Introduction

Parsis, though numerically small in numbers emerged as an important community during the British rule. Parsis were politically and economically significant during this time. As a result of their close proximity to the Britishers, Parsis could lobby and negotiate separate personal laws for the community. Parsis boycotted British statute applied to them and moved government to provide it its own separate laws on marriage, divorce and succession. Laws suitable to their conditions and ideas. Prior to 1837, the English laws applied to Parsis in all civil matters, except marriage and bigamy¹. There were no laws available to them governing marriage and succession. By 1820s and 1830s, special legislation was demanded by the community. Influential Parsi lawyers and judges had expressed their dissatisfaction towards the English law applying generally to Parsis. They started objected to the principles of English law.

Parsis succeeded in the enactment of Parsi code of laws and discarded English Common law applied to them. Mitra Sharafi called it 'de-Anglicization of the law'.² They de-anglicized the law that they opposed and made a law suitable to their needs. The strategy for reforms adopted by them is particularly relevant. While modernizing their family laws, the community has been able to preserve its specific cultural identity. Although the Parsi community is liberal and hold a progressive stand on women's issues, their traditional cultural norms are highly biased against women.

The historical overview of reforms in Parsi law remain important in order to understand the contemporary Parsi Personal law. This paper looks at the glaring defects of the antiquated Parsi Marriage and Divorce Act 1865. The

law of 1865 was influenced largely by the British statutes and was based on the English Matrimonial Causes Act of 1857. I focus in this paper on the Parsi Matrimonial Courts cases. In this Act, a wife could not sue her husband for maintenance unless she proves cruelty or personal violence (the only grounds for judicial separation). Another flaw was that a wife could obtain divorce only on the adultery of the husband with a woman not being a prostitute. Thus, the definition of adultery excluded sex with prostitutes. However, this prostitution exception was later eliminated in the Parsi Marriage and Divorce Act 1936. Parsi lobbyists and reformers found Parsi Marriage and Divorce Act 1865 defective as it did not meet the needs of the community. In England, the English matrimonial law was amended but the Parsi Act was not changed in conformity with it. Seventy years have elapsed since the passing of old 1865 Act and subsequently 1936 Act was passed. This paper critically review the draft Bill prepared by influential Parsi lawyers and leading members of the community to amend the Act of 1865. Although 'Community-based initiative' was adopted by Parsis to bring legislative reforms, Parsi women were not seen as part of this initiative.

During the period of national movement in India, women's like Sarojini Nadu, Anne Besant and other feminists were agitating and campaigning for women's suffragettes. At that time, the question of women's liberation was demonstrated by women's movement. Women belonging to different religion – Hindu, Muslims and Christians were demanding reforms in their personal laws. Parsi women's apparent silence during the demand for Parsi Marriage and Divorce Act, 1865 and revised Parsi Marriage and Divorce Act 1936 contrasts with the activism of several women's organization lobbying for legal reforms. Although Parsi women were missing from the process of reforming Parsi law, women's movement

* Independent Researcher

in the 1980s caused consciousness among Parsi women to agitate against discriminatory practices within their personal law. In a nutshell, the process of Parsi law reform was entirely male dominant and reconfigured male privilege in the community.

The position of women in Parsi community was relatively liberal compared to women in other communities. Male Parsi leaders lobbied for diminished or eliminate some of the gender-biased practices that they had been enjoying for ages—such as the freedom to practice polygamy and extramarital relations with prostitutes. By the time India achieved independence, Parsi women's legal status were far ahead of women in other religious communities. Christian women, although, gained the right to divorce in the Indian Divorce Act 1869 but they had to wait till 2001 when Indian Divorce Act was amended. It enabled Christian women to obtain divorce on the grounds of adultery, cruelty and desertion. It also provided right to divorce by mutual consent. For a Hindu woman, the ban on bigamy, right to dissolution of marriage and right to a share of the deceased father's property had to wait long until after independence, with the enactment of Hindu Marriage Act 1955 and Hindu Succession Act 1956. Muslim woman on the other hand, secured the right to vote her husband in the Dissolution of Muslim Marriage Act (DMMA) of 1939.

In Indian laws, women maintenance rights are very meagre. Because of deeply entrenched patriarchal mindset, property always goes down to males. Over the years, every religion has kept the system entrenched through personal laws.³ "A wife's economic entitlements on separation or divorce from her marital home are extremely limited'. Basically, the only legal right that an Indian woman can claim is a right to maintenance from her husband." "The concept of maintenance under all matrimonial statutes stems from the subordinate status of women."⁴ Most women who are compelled to leave their matrimonial residence due to separation, violence, adultery or even after divorce are rendered destitute, impoverished and financially dependent. "A separated woman, whether Hindu or Muslim faces almost same destitution unless she can persuade support from her natal family" (Jeffery 2003: 115).⁵ So many years down the line, women's marital status has not changed much except for Parsis who made enormous attempts to radicalize their laws.

The marriage and divorce laws of Parsis have radically transformed from 1860s to 1980s. This paper seeks to inquire into the historical genesis of Parsi Personal law and to highlight the phases of reforms by evaluating the attempts made by Parsi radical reformers in bringing out changes in Parsi law. The males of the Parsi community shared close ties with the Britishers. They agitated to make

their divorce law more rational, humane and equitable. It is noted that for the administration of justice among them, Parsis introduced Panchayats at various places of governance. The Parsi Panchayat of Bombay is the apex administrative body of Parsi Zoroastrian community and had the supreme authority and its ruling were followed by other panchayats. The British refused to recognize the authority of Parsi panchayats from the mid-1830s. Sharafi discussed the decline of the Parsi Panchayat as an adjudicatory body elected from the Anjuman.⁶ Perhaps the courts replaced the panchayat.

I. Historical Overview

The history of Parsis were distinctive and unique. Parsis migrated from Iran after its conquest by the Arabs in the 7th century and settled in India. They first landed in Diu and had moved extensively until they found settlement by the local Hindu King, named Jadao Rane. He allowed these early immigrants to stay in his kingdom on certain conditions. Parsis should adopt the local language, their holy text should be translated into the local language, they surrender their arms, that their women would wear the local Hindu dress and that they would follow Hindu system of marriage. It is noted here that Parsi practices, adopted from Hindu usage since their advent into India, continued to recognize them as binding arrangements⁷. Later, Parsis adopted the local customs into their social lives. Though Parsis adopted local language, they succeeded in maintaining distinct and separate identity.

The Parsis were followers of the ancient Persian religion of Zoroastrianism, a faith over three thousand years old that was structured around the teachings of Zarathustra Spitama. Ideally, a Parsi should be defined as someone born of a Zoroastrian parent. There was no definition of Parsi in the archaic 1865 Act. Later, in the Parsi Marriage and Divorce Act 1936, a Parsi is defined as:

"Parsi means a person professing the Zoroastrian religion and born of Parsi parents who profess the Zoroastrian religion or a Parsi father who professes the Zoroastrian religion"⁸

Unlike Hindu and Muslim personal law, Parsi law was not imposed by the British. The Parsis, Christians, and Jews had been left out of the official policy of non-interference in "religious" family law. Under the policy introduced by Warren Hastings in 1772, Hindus were to be governed by Hindu law, Muslims by Islamic law in questions of marriage and inheritance, but Parsis were at first governed by English law.

In *Naoroji v. Rogers*⁹, Bombay High Court ruled that Parsis in Bombay and their property were governed by the English statute.¹⁰ In 1835, when the Supreme Court declared that the Law of Primogeniture applied to

Parsis, there was a great resentment among the Bombay Parsi community. Strong resistance and representation countered this judgment. Subsequently, it had to repeal and special legislation was made.¹¹ In 1837, with the enactment of Parsees Immovable Property Act, Parsis were exempted from the operations of English law of Primogeniture. This law gave widows a share in the property and residue was distributed equally amongst the children and their descendants¹². However, they were continued to be governed by English statute in all other respects.

On 31 March 1860, a petition from the Managing Committee was appointed to prepare a draft code of laws relating to matters of Parsi inheritance and succession. It was laid before the Legislative Council of India by P.W. LeGeyt. While introducing the petition, he also argued the decline of power of Parsi Panchayats and subsequent increase in appeals to the Supreme Court wherein marital and inheritance related disputes were settled according to the principles of English law which were quite different from Parsi ideas and customs. In a Public meeting of Parsis of Bombay held at Sett Cowasjee Byramjee's Fire Temple in August 1855, LeGeyt made the suggestions which resulted in the enactment of a committee to prepare a draft code of laws. He argued:

"It was very important that in a movement of this kind there should be unanimity among the people who were affected by proposed law"¹³

A movement had started and he believed that there should be an expression of opinions among the people who were affected by the proposed code of laws. As a result, on 19 May 1860, a reference to the Government of Bombay by the Government of India, and copies of petition to the Legislative Council and copies of the draft code were forwarded to the magistrates of Surat, Broach, Ahmedabad, Tanna and Poona to obtain an expression of opinions from the Parsis within their several jurisdictions on the proposed law.

There were differences of opinions among the Parsis of Surat, Broach, Ahmedabad, and Poona and all of them differed from Parsis in Bombay. The mofussil Parsis objected to the rights of women to inherit the family property. The Managing Committee noted that the Parsis of Surat, Broach, Ahmedabad and Poona all hold conflict of opinions in respect to the rights of females to inherit the property of a female dying intestate. Surat Parsis concedes to the daughters a prior right of heritage to the exclusion of the husband and sons, while those of Broach stated "if a father is to bequeath apportion of his property to his daughter, he can do so by way of making a will". Although, they hold views more or less modified but they differ from each other. The Managing Committee said,

however, as per the sacred books of the Parsis, neither the Zend-Avasta nor any other sacred book recognized by Parsis contains any statement that says 'females are not entitled to inherit'. The mofussil Parsis, though in minorities, were hostile to the proposed reforms whereas the Bombay Parsis were in favor of the legislative enactment. However, both the Parsis in mofussil towns and Bombay Parsis agreed that the principles of English law of inheritance and succession were unsuited to them. Sir Erskine Perry, one of the jurists in India, argued that a code of law was urgently needed for the Parsis and nothing must any longer be allowed to stand in the way of a reform advocated by enlightened majority of Parsis.¹⁴

The select committee to whom the draft code was referred by the Legislative Council made their report on August 1860 and recommended that the Government of Bombay appoint a commission. Therefore, Government of Bombay appointed a commission to make an enquiry into the usages recognized as law by the Parsis and into the necessity of special legislation in connection with them.

In 1864, the Parsi Law Association was appointed for the purpose of drafting special Bills for the Parsi community relating to marriage and divorce. Based on its report, Parsi Marriage and Divorce Bill and Succession and Inheritance (Parsi) Bill were introduced in February 1865. These two were then, referred to the Select Committee which submitted its report on March 1865. Subsequently, two laws the Parsi Intestate Succession Act, 1865 and Parsi Marriage and Divorce Act, 1865 were enacted. It took more than thirty years for the Parsi members to persuade the Legislative Council to enact these two laws.

II. Parsi Marriage and Divorce Act of 1865: The Glaring Defects

Parsis' labours resulted in the enactment of PMDA, 1865. It was based on the principles laid down in the English Matrimonial Causes Act, 1857. The Act provided for the establishment of a system of self-governing Parsi Matrimonial Court — for settling its own marital disputes. According to Mitra Sharafi, the Parsi matrimonial courts are unique in India- no other body of personal laws uses a jury¹⁵. Mitra Sharafi (2010) argues that Parsi male elites used the law and the courts to secure their own patriarchal authority in the family and in the community.

Although Parsi Matrimonial Courts were largely dominated by male lawyers and judges but there were few lady barristers qualifying themselves as solicitors and advocates. Section 21 of the Act stated that the delegates must be Parsis. The appointment was not restricted to "males"¹⁶. For instance, Mithan Lam Tata was the first Indian woman barrister and first Indian women lawyer

at the Bombay High Court. She was appointed as a committee member of the Parsi Marriage and Divorce Act of 1865.¹⁷

Under 1865 Act, Bigamy was made illegal and adultery on part of either spouse was for divorce. It introduced monogamy and made Parsi marriage a dissoluble contract. Section 4 of this Act prohibited polygamy for Parsis. During this time, bigamy was legal in Hindu and Muslim communities. Although bigamy had already been criminalized for all Indians except Hindus and Muslims under the Indian Penal Code (IPC). S.S. Bengalee,¹⁸ Secretary of Parsi Law Association, declared that Parsis were Asia's most civilized community who have voluntarily imposed on themselves a law declaring Bigamy a criminal offence.

The only ground of divorce was adultery on the part of the other spouse. This ground was not alike for husband and wife because a husband could obtain divorce on simply adultery of his wife, but a wife could obtain divorce only on the adultery of the husband with a woman not being a prostitute. This provision excluded sexual relation with a prostitute from the definition of adultery¹⁹. For the next few decades, it was difficult for women to prove if their husbands had been adulterous.

The grounds for nullity of marriage were congenital insanity, impotency, seven years of continual absence or disappearance, desertion for a period of four years, insanity after marriage, three years separation after a separation order, change of religion and pregnancy unknown at the time of marriage.

A wife could obtain judicial separation from her husband on the ground of personal violence or gross cruelty. The same right was not available to husbands. The discriminatory provision was that in case of adultery of the husband, the wife must also prove cruelty or two years of desertion.²⁰ A husband could seek divorce more easily than a wife. It was felt that the Act was defective in several respects. It was not possible for a woman to obtain separation in certain cases and equally impossible to seek maintenance even where the husband may have been guilty of excesses or cruelty.²¹

In a suit of *Dinbai Toddywalla vs. Erachsha Toddywalla*, wife filed a case against her husband for restitution of conjugal rights. The main question before the court was whether the child born of a Parsi father and non-Parsi mother, was a Parsi within the meaning of Parsi Marriage and Divorce Act. The husband resisted her claim on the ground that he was induced to marry his wife owing to a fraudulent misinterpretation made to him that both his wife's parents were Parsis. He further contended that:

"She had not been properly invested with Kusti and Sudra and that according to the Parsi custom and usages such a person could not be admitted into the Parsi fold and that the word

Parsi in the Act meant a child born of a Parsi father and a Parsi mother."²²

However, the court gave the decree in favour of the wife. The conservatives in the Parsi community believes that the issue is not of discrimination against women but a belief that a true Zoroastrian can only be someone with Parsi Zoroastrian (i.e., by race and religion) parents.

Section 83 of the 1865 Act provided for the payment of alimony to the wife and grant court the power to order the husband to pay the wife monthly during the litigation. Section 34 deals with the question of alimony to be given to a wife after dissolution of marriage. The scope of this section was varying from section 83. Section 34 gave power to the court to order the husband on a decree of divorce or judicial separation to provide to the wife a gross sum or monthly or periodical payments for a term not exceeding her life. This section was similar to the Section 32 of the English Matrimonial Causes Act of 1857. Although, under Section 32 of the English Act, court had no power to make personal orders against the husband for payment of monthly or weekly sum. It is noted that Section 17 and 22 of the English Act dealt separately with alimony in case of judicial separation and allowed to make periodical payment to the wife. However, no such provision was there in the Parsi Act for separately providing periodical payment to the wife in case of judicial separation.²³

In case of *Manekbai Kapadia vs. Nadirsha J. Vachha*, an important question came before the Parsi Matrimonial Court whether court had jurisdiction to alter an order of permanent alimony once having been made. In 1928, after petition filed by Manekbai for dissolution of marriage, Justice Davar passed a decree for divorce. The wife applied for permanent alimony, subsequently Justice Davar ordered Nadirsha to pay to Manekbai Rs 85 monthly or permanent alimony. Within few years after divorce, husband got remarried. In 1934, the wife too got remarried. In 1935, Nadirsha made an application before Justice B. J. Wadia to reduce the alimony amount payable to Manekbai on the ground of changed circumstances and their remarriage. However, Justice Wadia held that the court had power to alter the order as and when the circumstances changed. He also stated that there was nothing in the original 1865 Act that prohibited the alteration of such an order. He therefore, reduced the alimony amount to Rs 50 per month. Later, in appeal it was maintained on behalf of Manekbai that Section 34 of Parsi Marriage and Divorce Act was largely in its terms to Section 32 of the English Matrimonial Causes Act 1857, hence, courts were not empowered to vary such an order. It had been held under Section 32 of the English Act that permanent alimony was of permanent character.²⁴

The Matrimonial Causes Act 1857 was amended in 1866 whereby the Matrimonial courts in England were given power to make personal order against the husband on a dissolution of marriage for periodical payments to the wife and also power to vary such an order. The English Act was amended but Parsi Act was not amended in conformity with it.

The Act of 1865 prohibited bigamy among the Parsis at the request of the then leaders of the community. This law did not apply to native states if a Parsi desire to elude the law, they did so by going to Navsari, a stronghold of Parsi orthodoxy which is situated in the territory of Gaekwar. At that time, Native states were not included in British India, hence, British law was applicable there unless the states enacted special law on the lines of the British law. The British law of marriage and divorce did not apply in the territory of Gaekwar. The cases of bigamy arose in this way²⁵.

In one of the cases, a charge of bigamy was brought against Nadirshaw Framji Engineer by Shehera Nadirshaw Cama. He married her during the lifetime of his first wife and hide from her about his first marriage with Aimai Fakriji Sopariwalla. The complainant accused Nadirshaw that in his marriage certificate, he had represented himself as a bachelor and given his name Nadirshaw Framji Engineer. She came to know that Engineer was already married under the name of Burjorji Framji Sultan to Aimai Fakriji Sopariwalla.²⁶

In the case of Bai Awabai vs. Khodadad Ardeshir, the question of legality of marriage came before the court. The wife sued her husband for divorce but the first issue aroused was whether the petitioner was lawfully married to her husband. In Section 3 of the 1865 Act, the requisites to the validity of a marriage were laid down:

“Those requisites briefly were: 1) the absence of any degree of consanguinity or affinity prohibited among Parsis, 2) the solemnization of Ashirwad ceremony by a Parsi priest in the presence of two Parsi witnesses, 3) in the case of Parsi under 21 years of age, the consent of father or guardian given previously to the marriage.”²⁷

It was observed that in this case there was no marriage certificate and therefore there was no entry in the register. The further directions of the court in this case were that a certificate was to be sent to the Registrar who made an entry in his register.

III. Era of Reform for the Parsis

In 1923, Parsis reformers felt that the old Act of 1865 did not answer the present needs of the community. The Council of the Parsi Central Association has been making strenuous efforts to get Parsi Marriage and Divorce Act

amended in view of the fact it is defective in many respects. Parsi Laws Revision Committee was appointed to bring modifications in the Act as per the present conditions and needs of the community. This Committee submitted its Report in April 1927 and it contained curtailed recommendations made by influential Parsi members such as Right Hon'ble Sir Dinshaw Mulla, Justice B.J. Wadia, Messrs, H.C. Coyaji and D.N. Bahadurji. The committee based on the recommendations produced a draft bill and appointed a sub-committee under the chairmanship of Sir Cowasji Jehangir. The draft bill was sent to Parsi Panchayat and other Parsi authorities for their expression of opinion. It represents the picture of great majority of the community and has been approved by leading Parsis of that time.

A bill was introduced in the Council of States by Sir Pheroz Sethna, relating to law of marriage and divorce among Parsis. The Bill attempted to remedy certain defects in the old Act. In the proposed bill, attempt has been made to amend the grounds for divorce, abolition of suits for decree of nullity, judicial separation and restitution of conjugal rights. It introduced some new grounds for divorce — rape, non-consummation of marriage, mental unsoundness, wilful desertion, disease. Judicial separation, grant of alimony and restitution decree disobeyed for over a year were other grounds. A system of registration of divorce was introduced. An additional ground was a wife being forced into prostitution. The committee on the status of women recommended:

“The provision in the Parsi Marriage and Divorce Act, 1936 which enables a wife to obtain a divorce if her husband has compelled her to prostitution, in our view, is a very desirable protection; we recommend inclusion of this provision in all other personal laws.”²⁸

Two amendments were made by Sir N. Choksy, first defining a Parsi as a meaning of Zoroastrian and second related to grant of maintenance to the wife. Also, to make monthly payment to the wife for her maintenance.

“Among the Changes was one regarding the payment of permanent alimony. The Act provides that the if the court sees the fit at the time of passing any decree under this Act, the husband shall pay the wife, ‘while she remains chaste and unmarried’ a gross sum.”²⁹

This notion that a wife can only get maintenance as long as she remains chaste and unmarried reflect the intention of the framers founded on a strong expression of opinion at that time. Such opinions reconfigured male privilege in the community.

Despite of the proposed alterations by the Parsi Law Association Committee, a glaring defect in the Act had remained unremedied. A Parsi wife cannot sue her

husband for maintenance alone. It was held in *Bai Gulbai vs. Beramsha* (16 Bom. L. R. 211) by Justice Macleod that:

“The monstrous position is that unless a Parsi wife proves cruelty, or personal violence, or such other conduct on her husband’s part as endangers her personal safety (these alone are grounds for judicial separation) she cannot sue him for maintenance.”³⁰

This grossly unfair provision left Parsi women in a mere dependent position and deprived them of a right to maintenance. Hence, Parsi members suggested that a suitable provision to be made in the proposed amendments to enable a wife to sue her husband for maintenance alone.

In another suit of *Payne and Company*, the Bombay High Court had addressed the question whether a Parsi wife was entitled to come to the High Court to make her claim of maintenance before it in accordance with the English Common law. Justice Davar held that:

“Wherever there was no provision in the Parsi law for a wrong, English Common law applied.”³¹

However, with the proposed amendments in the old 1865 Act, the Parsis had succeeded in avoiding some of the pitfalls of the controversial English law. The framers of the Bill succeeded in the enactment of Parsi Marriage and Divorce Act of 1936. This Act is similar in several respects to English law governing marriage and divorce. The English Matrimonial Causes Act of 1923 recognized the equality of the sexes. Parsis made immense efforts to place men and women on an equal footing so far as matrimonial causes are concerned. This Act also removed the Prostitution exception provided to husbands when it comes to adultery. This reform was celebrated for its gender equality and as a creation of uniform grounds for divorce between husband and wife.

The legislature of Baroda made enormous efforts in the direction of enacting marriage laws for the Parsis domiciled in the state. Important changes were made in the 1936 Parsi Marriage and Divorce Act, which had been adopted by the Baroda state with slight modifications. The Baroda government have brought forward a Bill to incorporate some of the changes.

“The Bill authorizes the court to grant alimony or maintenance as long as the wife does not take another husband or remains chaste and to modify the original orders from time to time in the light of the altered circumstances of either party and also to pass orders for equitable division of property received by them at the time of marriage.”³²

Since the makers of Parsi matrimonial law were almost entirely male, socially and economically privileged, Parsi law reflects the interests of the elite males of the community.

IV. Reforms in the Eighties

The 1980s witnessed the emergence of women’s movement in India fighting against the patriarchal ideology and discriminatory aspects of personal laws. women’s groups demanded reforms in customary laws and make gender-just laws. The controversial *Shah Bano* case focused the attention of women’s lobbyists towards the discriminatory provisions in various personal laws. By this time, Hindu law was codified and Hindu Marriage Act 1955 and Special Marriage Act 1954 was also enacted.

Parsi community once again took the initiative of reform and drafted the Parsi Marriage and Divorce (Amendment) Bill of 1988. The reforms were based on the recommendations of Law Commission’s 110th report³³. These reforms were spearheaded by legal scholars from the community, as well as community members from Parsi Panchayat. The board of trustees of the Bombay Parsi Panchayat submitted the recommendation to the government. The Parsi Marriage and Divorce (Amendment) Bill was introduced in the Rajya Sabha on 24 November 1986. Later, it was passed by both the houses and received President’s consent on 25 March 1988 and came into force in April 1988. The reforms of marriage and divorce laws followed the provisions of Hindu Marriage Act. Divorce was further liberalized, and a provision was included that allowed for divorce by ‘mutual consent’. The disparity between legitimate and illegitimate child was also abolished. Both husband and wife have equal rights to obtain alimony and maintenance from each other. Succession laws of Parsi community were amended in 1991 under which the discrimination between female and male descendants was abolished. During the whole debate on Parsi legal reforms, Parsi women were missing from any appearance. The debate was largely dominated by the male members of the community. Parsi women themselves were not involved to any meaningful extent in lobbying for these legal reforms.

Conclusion

Parsi matrimonial law was massively reformed from 1860s to 1980s. The moment Parsis heard in 1854 that people in England were agitating for the enactment of courts, they started agitating for the similar laws for their community and succeeded in 1865 in having Parsi Marriage and Divorce Act passed by the Legislative Council. The 1865 Act was found defective in the eyes of the Parsi reformers. After considerable agitation, it was amended and new Act was passed in 1936. This Act had enlarged the scope of grounds for divorce and introduced some additional grounds for Parsi women to seek divorce easily. It provides several grounds for divorce for a woman to dissolve her marriage. In my view,

inclusion of rape and wife being forced into prostitution³⁴ were two very foremost grounds that every divorce law should include to ensure gender equality. Later, the Act of 1936 represents the views of the great majority of the community and has been approved by leading male Parsis litigants and reformists. While the role of Parsi women as actively participating in the process of reform were largely missing, they were even missing from the gatherings and meetings that were held to discuss the amendments within the Parsi law. Although Parsi law had been altered from time to time by the male members of the community, it did not picture the expression of opinions of Parsi women. Despite of no appearance of Parsi women in making of the Parsi law, efforts had been made to put the sexes on an equal footing in respects of divorce and marriage. The reforms in the eighties in Parsi law was a result of massive women's movement that had emerged in the country. During that time, a consciousness had aroused among the women of different religions to start demanding legal reforms.

Although Parsis represents a modern and rational picture to the society but they turned a blind eye on the discriminatory customs prevailing in the community. Can the children of a Parsi woman married to non-Parsi become a Parsi? In many instances, the trustees of Parsi Panchayats refused to allow them Zoroastrian funeral rites and barred their entry into the fire temples or tower of silence. This ultra-conservative mindset is only for the women members of the community. This rule does not apply to male member. It would be fair to argue that such opinions reflect a dominant patriarchal ideology. Parsis should get done away with this discrimination against women and allow a Parsi woman who marry a non-Parsi to retain her community rights. In a nutshell, for Parsis, preservation of their identity lies at the heart of their community. This is evident from their efforts to obtain a separate set of laws for their community. No other community had made such attempts to alter their laws so immensely.

Notes

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33. See, Flavia Agnes, 'Legal Significance of the Parsi Community', in Flavia Agnes, Sudhir Chandra and Monmayee Basu (ed.) *Women and Law in India: An Omnibus*, 2004, p. 137.
34. Section 32 (a) of *Parsi Marriage and Divorce Act*, 1936.