

ART. III.—THE RE-MARRIAGE OF HINDU WOMEN.

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1. "*Texts proving that women (widows or others) were allowed to re-marry, for any reason whatever, in ancient India.*"

The Atharva-veda contains another passage on this subject, besides the one quoted at p. 11 (see *I. E. R.*, vol. x. p. 399) of the Rev. K. S. Macdonald's Essay. I am referring to *Atharva-veda* v. 17, 8: "And when a woman has had ten former husbands not Brahmans, if a Brahman takes her hand, it is he alone who is her husband. 9. It is a Brahman only that is a husband, and not a Rājanya (warrior), or Vais'ya (husbandman). That (truth) the sun goes forward proclaiming to the five classes of men" (Dr. Muir). This verse, according to the just observation of Dr. Muir, proves that Brahmans were in the habit of marrying, not only maidens, but widows belonging to the lower castes. That Brahmans were allowed to marry widows of their own caste, may be gathered from the other passage of the Atharva-veda which is quoted in Mr. Macdonald's Essay. This passage, however (*Atharva-veda* ix. 5, 27), tends to show that re-married women were not held, even in the Vedic epoch, in the same estimation as women married as virgins. They had to perform an offering called "Aja Panchaudana," and consisting of a goat and of a certain kind of pulse, on the occasion of their second marriage. The Atharva-veda states expressly that their second marriage was invalid without that expiatory ceremony.

To the Smritis the principal text on the legitimacy of re-marriage is the one attributed to Parāsara and Nārada, and actually found in the Institutes of these two authors. See *Nārada* xii. 97; *Parāsara* iv. 28. The two authors, as pointed out by the Rev. K. S. Macdonald, give the same rule. Indeed, they agree word for word. I propose to translate the text in question as follows:—

"*When her husband is lost (i.e. when no tidings are received of him) or dead, when he has become a religious ascetic, when he is impotent, and when he is expelled from caste: these are the five cases of legal necessity (âpat) in which a woman is justified in taking another husband.*"

There are some other texts in the Nārada-Smriti, besides those quoted by Mr. Macdonald, which may be adduced likewise as evidence that the re-marriage of widows was favoured by Nārada in certain cases.

Nārada xii. 24: "When a bridegroom goes abroad after having espoused a maiden, let the maiden wait till her menses have passed three times, and then choose another bridegroom." xii. 29. . . . "In the three (lower forms of marriage) beginning with the Asura form, the (irrevocable) gift (of a maiden to a suitor) depends on the qualities (of the suitor). 30. Should a more respectable suitor, who appears eligible in point of religious merit, worldly advantages, and amiability, present himself, when the nuptial gift has already been handed over (to the parents by the first suitor), the verbal engagement (previously made) shall be annulled."

It is true that this rule is applicable to the lower forms of marriage only, *i.e.* marriage by purchase, rape, or seduction.

Nārada xii. 31: "Let no man calumniate a faultless maiden, neither must one calumniate a faultless suitor. When, however, there is an actual defect, it is no offence if they dissolve their mutual engagement."

It should also be noticed that *Nārada*, while classing "Punarbhûs" (re-married women) with "Svairinis" (wanton women) as Parapûrvâs, *i.e.* women who have previously lived with another man, assigns a higher rank to them than to the Svairinis.

To the chapter on Recovery of a Debt, *Nārada* discusses in some detail the liability of one who lives with the wife or widow of another man for debts contracted by that man. His terms are not sufficiently clear to admit of deciding whether he is referring to re-marriage or concubinage in this case. However, the discussion of this subject proves that cases of this kind were of constant recurrence, and that the legislation of India was obliged to take cognisance of them. See *Nārada* i. chapter 3 (pp. 17, 18).

In course of time, the views of the Smṛiti writers regarding the permissibility of re-marriage increased in strictness. Thus we find it stated in a text of Kasyapa, that none of the "seven species of re-married maidens" is eligible for marriage; and it appears from the context, that even one verbally promised to a suitor only, as well as the daughter of a re-married woman, was denominated a re-married maiden by Kasyapa. The text of Kasyapa is quoted with approval in that authoritative work on marriage, Raghunandana's *Udvāhatattva*, composed in the 16th century. Besides, there are the well-known texts regarding practices forbidden in the present (*Kali*) age of the world, as quoted in the general note to Sir W. Jones's *Manu* and elsewhere. These very texts, however, show that the practices against which they are levelled, such as, *e.g.*, the second gift of a

married young woman whose husband has died before consummation, must have been in vogue in ancient times.

2. "*Texts showing that the sons of re-married women were treated as in any sense legitimate.*"

The question regarding the position and rights of the son of a re-married woman (*Paunarbhava*) is treated in every Smriti, in the law of inheritance. A table of sons, showing the relative position assigned to each species of son in the Smritis, may be found in T. D. Mayne's *Hindu Law and Usage*, as also in Dr. A. Mayr's *Das indische Erbrecht*. The position assigned to the *Paunarbhava*, or son of a re-married woman, varies from the third to the eleventh place, the total number of sons being twelve or thirteen, or at most fifteen. It is important to note that two such well-known Smritis as the law books attributed to Vishnu and Vasishtha name the *Paunarbhava* as the fourth son, his right of inheritance accruing, according to them, immediately on failure of legitimate *Kshetraja* and *Putrikā* sons. (The *Kshetraja* is a son begotten by Niyoga on the wife of one who has no issue; the *Putrikā* is an appointed daughter.)

Besides, the *Kshetraja* son is, in a certain sense, the son of a re-married woman as well as the *Paunarbhava*. The *Kshetraja*, or son begotten on a wife by a kinsman appointed thereto, is given the second place in nearly all Smritis. He ranks immediately after the Aurasa or legitimate son of the body. It is true that the stricter view, according to which the practice of the Niyoga or Levirate is forbidden in the present age of the world, begins to show itself in such early Smritis as the Code of Manu, and the *Āpastamba Smriti*.

3. "*Texts in which women were allowed to marry after arriving at puberty.*"

Manu ix. 90: "Three years let a damsel wait, though she be marriageable; but, after that time, let her choose for herself a bridegroom of equal rank." *Yājñavalkya* i. 64: "He who fails to give a maiden in marriage, incurs the crime of one who procures abortion each time her menses appear. On failure of persons competent to give her in marriage, a maiden may choose a suitable bridegroom herself." *Vishnu* xxiv. 40: "When (a damsel) has allowed three monthly periods to pass (without being married), let her choose a husband for herself; three monthly periods having passed, she has in every case full power to dispose of herself (as she thinks best)." *Gautama* xviii. 20: "A (marriageable) maiden (who is not given in

marriage) shall allow three monthly periods to pass, and afterwards unite herself, of her own will, to a blameless man, giving up the ornaments received from her father (or his family).” *Nārada* xii. 22: “If there be none of these (relations competent to give her in marriage), a maiden shall apply to the king, and having obtained his permission to make her own choice, choose a husband for herself (23) of the same class as she is, and fitted for her in descent, qualities, age, and religious knowledge.”

It appears from these texts that the compilers of the Smritis were perfectly familiar with the custom of *Svayamvara*, or “self-choice” of a husband by a maiden, which is so often referred to in the ancient epics of India. The typical instance of *Svayamvara* in the epics occurs in the well-known history of Nala and Damayantī, where it is introduced as follows: (Canto ii. verse 7) “The prince reflecting that his daughter had reached maturity, found that it was time to arrange the *Svayamvara* of Damayantī (his daughter).” It might, indeed, be argued that the authors of the Smritis may be supposed to have borrowed their rules in regard to *Svayamvara* from the epics, as that custom is decidedly opposed to the theories of the Smriti writers regarding the perpetual dependence of the sex, and the necessity of early marriage. That girls should be married before puberty is a rule inculcated in most Smritis, though no doubt they were not delivered to their husbands till they had reached puberty.

4. “*Texts in which the betrothal in childhood was followed by marriage only after arriving at maturity or puberty.*”

It is not often that the compilers of the Smritis refer to betrothal as distinct from the marriage ceremony, because a mere betrothal is not in general a legally binding act. *Nārada* is the only author who declares that.

Nārada xii. 2: “When a man and woman unite (in wedlock), the choice of the bride (*i.e.* the betrothal) takes place first; and after the choice of the bride, the ceremony of joining the bride and bridegroom’s hands (*i.e.* the marriage ceremony); thus the sacrament (of marriage) is composed of two parts.”

As for marriage after puberty, *Nārada* has the following:—

xii. 25: “Let no maiden suffer the period of maturity to come on without giving notice of it to her relations. Should they omit to give her in marriage (thereupon), they would be equal to the murderers of an embryo (*i.e.* as criminal as one who procures abortion). 26. He who does not give such a maiden in marriage, commits the crime of killing an embryo as many times as her period of menstruation passes by without

her having a husband. 27. Therefore a father must give his daughter in marriage once (for all), as soon as the signs of maturity become apparent. (By acting) otherwise he would commit a heavy crime. Such is the rule settled among the virtuous."

As Nârada distinguishes the betrothal from the marriage ceremony, it may perhaps be inferred that the marriage after puberty, to which he refers in these texts, should be preceded by betrothal in infancy.

5. "*Texts showing that unconsummated marriages or betrothals were followed by marriages to others than the men to whom the girls were betrothed in infancy.*"

Nârada xii. 3: "Of these two (parts of the sacrament of marriage, viz. betrothal and marriage ceremony) the betrothal is held invalid, if a fault is discovered (in either party)."

Manu declares that the discovery of a fault in a damsel may even tend to annul a marriage legally contracted.

Manu ix. 72: "Even though a man have married a young woman in legal form, yet he may abandon her, if he find her blemished, afflicted with disease, or previously deflowered, and given to him with fraud. 73. If any man give a faulty damsel in marriage, without disclosing her blemish, the husband may annul that act of her ill-minded giver."

Nârada himself seems to declare, in other texts, that marriage (not only a betrothal) may be annulled, when a fault is discovered; and he states expressly that the discovery of a concealed fault in the bridegroom has the same consequences as the discovery of the same in the bride.

Nârada xii. 31: "Let no man calumniate a faultless maiden, neither must one calumniate a faultless suitor. When, however, there is an actual defect, it is no offence if they dissolve their mutual engagement." Further on, Nârada defines the "faults" of a maiden or suitor. He does not say that a maiden, whose suitor or husband was discovered to have a fault before consummation, might take another husband; but it appears probable that he is not adverse to her marrying again.

Nârada certainly allows a maiden to take another husband, when her bridegroom goes abroad and is no longer heard of.

Nârada xii. 24: "When a bridegroom goes abroad after having espoused a maiden, let the maiden wait till her menses have passed three times, and then choose another bridegroom."

Manu declares that a maiden, whose husband dies before consummation, shall marry her brother-in-law. Manu ix. 69, 97.

The rule of *Yâjnavalkya* (i. 65), that a maiden may be given

to a better suitor, though he does not come forward till the match has been concluded with the first suitor, seems to be applicable to the three lower forms of marriage only, like the analogous rule of Nârada, xii. 29.

ART. IV.—SUNDRY DOCUMENTS ON THE CHILD-
AND RE-MARRIAGE QUESTION.

As will be remembered by many of our readers, the presence of a large number of missionaries in Calcutta to attend the Decennial Conference was utilized for holding a meeting to consider what should be done to obtain relief for native Christians who suffer from the present marriage and divorce laws. The meeting was held on January 4th, 1883, and a good many missionaries were present. Rev. W. R. Blackett, of Calcutta, was appointed chairman, and Rev. R. A. Hume, of Ahmednagar, was appointed secretary.

After much consideration, it was unanimously agreed—"That a Committee (representing different parts of India) be appointed to take such measures as may be necessary in order to obtain modifications of the present marriage laws for the relief of the native Christian community.

"That an Executive Committee be appointed who shall be *ex officio* members of the General Committee.

"That the Executive Committee shall be authorized to appoint substitutes for such members of the Executive or General Committees as may at any time be unable to act."

In accordance with this resolution, the following Committees were appointed:—Executive Committee: Rev. K. S. Macdonald, convener; Rev. J. M. Thoburn, D.D., Rev. W. R. Blackett, Rev. J. E. Payne, Rev. G. R. Kerry, Rev. G. D. Maitra, and Rev. P. M. Mukerji, all of Calcutta.

General Committee: For Bengal, Rev. J. L. Phillips, M.D., Midnapur; for the N. W. P., Rev. T. J. Scott, D.D., Bareilly, Rev. W. D. Etherington, Benares; for the Panjab, Rev. E. M. Wherry, Ludhiana, Rev. T. R. Wade, Amritsar; for Bombay, Rev. Buchanan Blake, Bombay, Rev. R. A. Hume, Ahmednagar; for Madras, Rev. E. Sell, Madras, Rev. J. Cooling, Madras, Rev. E. Chester, M.D., Dindigul.

At a meeting of the Committee on January 5th, the Rev. K. S. Macdonald, of Calcutta, was appointed chairman, and the Rev. R. A. Hume, of Ahmednagar, general secretary. It was also decided to take measures to ascertain the wishes of the native