CHAPTER 2

Status of Women
STATUS OF WOMEN

Human beings are born equal and are endowed with equal abilities. Equality of status is reiterated in all global, regional and national documents speaking about development and peace. But throughout the world, the cry, which began in the middle of the last century, still continues for equality of women with men and non-discrimination in the attitude of society towards women. When the phrases in the documents evidence rhetoric of equality between sexes in all avenues, the reality seen through facts in the environment renders a different conclusion.

The position of women in any civilization shows the stage of evolution at which the civilization has arrived. Violence against women, caused because of the unequal power relation between man and woman in the society has been acknowledged as hindering the full integration and equal participation women in society. Social system considers women to be weak, lack cognitive and decision making capacities and therefore are avoided in national development programmes. Women are expected to guard their delicacies and other so called feminine qualities in the name of culture. Thus women power was kept unexplored, unused and therefore devalued.
Women are not only treated subordinate but also not even treated as human beings. Female babies are avoided even before birth by determining its sex through amniocentesis test. They are at birth killed, or denied food or drowned or suffocated simply because they are born girls. Female infanticides is till now accepted as normal village custom in some places. Women and girls are sold into slavery and prostitution. They are burnt to death because their dowries at the time of marriage are deemed too small. Women are killed due to domestic violence and are raped or forced to undergo abortion or are sterilised against their will. The society is conditioned of inequality of power and status, and women are denied the basic freedoms for human existence. Women's passivity, submission and self-denial contribute to low esteem in them. Feelings of being inferior, unwanted and burdensome develops the stereotype of the emotional, immature and helpless neurotic. Equality not dejure but defacto, is the cry of the modern woman as she is searching for her place in the human society. Her awareness and assertion of rights and privileges in various domains of social activity alone can help her to attain this status.

2.1 Status - Conceptual Analysis

Status of a person is defined as his or her position in a society or group. It also means the relative legal position of an individual in or with regard to the rest of the community and is determined by the person’s personal rights, duties and liabilities. Women constitute nearly half of the human population and it is often said that the range and quality of development of a society is decided by its women and their status, which is determined by an analysis of their relationship with their fellow human beings at home and in society.

Women were relegated to the private sphere of home, given the only responsibility of procreation and caring of young ones. They were considered more suited to the indoor duties and were denied community responsibilities. Various factors contribute to the lower status of women in the society. They include biological differences, as male and female, historical causes due to wars and foreign invasions, religious rigours which in a woman's life decide her role in the society, cultural practices such as women's sexual subordination, early marriage age etc., economic conditions where a large part of the women's labour force continues to be invisible with regard to official statistics which do not adequately reflect women's productive work and in the non-market economy, women are victims of occupational segregation.
differences in values awarded to jobs, wage differential, discrimination in education and training etc., political situations where 50 years after the country achieved independence, women who constitute nearly 49% of the country's population are yet to get their due share in the public life. According to the 1993, World Education Report of UNESCO, 905 million men and women almost a quarter of the world's adult population are illiterate. About 587 million or 65 percent of them are women and legal protection influence the status of a women in a given society.

Till the end of the last century, literature on women was scanty and even when available, was either biased and outdated or incomplete, because the whole corpus of the human knowledge about women was built by and for men. In the available literature too, women were mostly portrayed as second sex and philosophers from the western and eastern world considered women as dependent in perpetuity.

2.2 Women in Literature

Literature on women is both unrealistic and unnatural. Women are portrayed as extremely good or extremely bad. She is described as god or otherwise a devil. She can be either Sita\(^2\) or Shurpanika\(^3\). There

\(^2\) In Hindu Epic Ramayana, Sita is the wife of Sri Rama and she is a symbol of a virtuous Hindu wife.

\(^3\) Shurpanika is the sister of Ravana, and she is an embodiment of vices.
is no portrayal as the normal human being with both good and bad qualities in literature.

Ancient literature on religion considered women as dependent in perpetuity and valueless. Greek Social philosopher Aristotle, maintained that the female is a female by virtue of a certain lack of qualities and attributed to her, natural defects. Roman law limited the rights of women on the ground of the instability of the sex. Among the blessings for which Plato thanked the Gods were first that he had been born free and not a slave and second that he was a man and not a woman. During middle ages, priests exhorted men to beat their wives and wives to kiss the rod that beat them. The first book of church law, the Decretum, written in 1148, required that "a man must castigate his wife and beat her for her correction, for the lord must punish his own" - man being the Lord's agent for authority.

George Wilhelm Friedrich Hegel (1770-1831), one of the early sociologist regarded women as inferior and with less reasoning abilities. In the past days men were powerful and active and within the family men had the capacity for conceptual thinking. Therefore granting real

---

freedom, enabled them to make history and engage in politics and learning. Women on the other hand were passive and subjective because they were self-conscious and lacked the capacity for reflection. Women were denied personal autonomy since individuality and family life were contradictory. Women was the first human being that tasted bondage, woman was a slave before the slave existed.

Under Christianity women were compared with sin. Women were degraded to the rank of the humble servant of man and they were to pledge their obedience to their husband before the altar. According to the Bible, at the creation women are commended to be subject unto men. The ten commandments of the old testament were as a matter of fact addressed only to men, for the tenth commandment named women along with the servants and the domestic animals.

Paul founder of Christianity preached as follows:

"It is good for a man not to touch a woman." Woman was the unclean one, the seducer, who brought sin into the world and caused the fall of man.

*The First Epistle of Paul, The Apostle to the Corinthians
Tertullian exclaims.

"Women thou oughtest always to walk in mourning and rags, thine eyes filled with tears of repentance, to make men forget that thou hast been the destruction of the race, women! Thou art the gate of hell."

Schopenhauer, the celebrated Philosopher remarks, "Woman is not called to great things. Her characteristics are not active but passive. She pays her debt to her husband. The intense utterance of violation and sense are denied to her. Her life is destined to be less eventful and more trivial than that of man. It is her vocation to nurse and educate children, because she is herself childish and remains an overgrown child all her life, a kind of intermediate thing between the child and the man, who is the only proper human being. Girls should be brought up to habits of domesticity and servility. Women are the complete and hopeless Philistines."

2.3 Common sayings about women

A few sayings from different countries, by different people at different times, pictures women as valueless.

*August Bebel, Supra. note 6, at p 61
*Ibid. at 78
"A spaniel, a woman and a walnut tree, the more they are beaten
the better they be" (Old English proverb)

"A wife isn't a jug... She won't crack if you hit her ten times."

"A wife may love a husband who never beats her, but she does
not respect him" (Russian proverb)

"Now we are even," quoth Steven, when he gave his wife six
blows to one (Jonathan Swift)

"Man is the hunter, woman the game" (Tennyson)

"When did you stop beating your wife?" "Who said I stopped?"

(Vandeville Joke)

"Some women should be struck regularly like gongs" (Noel
Coward)

"Those whom we marry are those whom we fight" (African
proverb)

"Never marry a girl you can't knock out with one punch" (Pate
Hamil)"

A French proverb says If the horse and the wife fall sick at the
same time, the peasant rushed to the blacksmith to care for the animal

"Meryln Lobo Brito, Wife beating, Indian Womanhood Then and Now, situations
Efforts, Profiles Jesse B Teliss Nayak, at 75 (1983)
and leave the task of healing his wife to nature as rich is the man whose wife is dead and horse alive.

Vedic literature provided evidence of both honour and censure, capacities and incapacities about womanhood. There are contradictions amongst the commentators. Yagnavalkya Smriti contains verses to the effect that women are to be guarded and protected at the same time Rigveda contains verses derogatory of womanhood as follows

“The mind of woman is uncontrollable”

“There is no friendship with women and they have the hearts of hyenas”

“Women are the weapon and army of dasa. And therefore women are without strength”

“Woman, sudra, a dog and a cow embody untruth, sin and darkness”

Niti slokas contains description about women as daughter, wife and mother. It runs as follows

Truth is our mother, justice our father, pity our wife, respect for others our friend, clemency our children. Surrounded by such relatives

1 Rig. VIII 33 17
we have nothing to fear\textsuperscript{12}

However learned one may be, there is always something more to be learned, however much in favour one may be with kings, there is always something to fear. However affectionate women may be, it is always necessary to be away of them\textsuperscript{11}

"It is more easy to discover flowers on the sacred fig tree than to know what a woman has in her heart"\textsuperscript{16}

"there is no means by which we can know thoughts of a woman"\textsuperscript{15}

Women meant only burden and no profit and her position stepped down worse than that of cattle. Ancient discriminatory laws and traditions confined them constantly to the proprietary attitude of men and the concept that man is superior to woman became an universally acknowledged fact. To obey her husband and to honour him as God, is the primary duty of a wife, she is not to hate her husband even if he be impotent, devoid of a limb or diseased, since the husband is the God of woman\textsuperscript{16}

"A virtuous wife should serve her husband as if he were a God

\textsuperscript{12} \textit{Nas \text{\textit{Shaka}} XXIX}
\textsuperscript{11} \textit{Nas \text{\textit{Shaka}} X XVI}
\textsuperscript{16} \textit{Nas \text{\textit{Shaka}} XI VIII}
\textsuperscript{15} \textit{Nas \text{\textit{Shaka}} XLIX}
\textsuperscript{16} Apastamba Dharma Shastr 

speaks about the duties of the wife
whether be be of evil character or lustful or devoid of good qualities."

This is the highest duty (Dharma) of women that they should obey their husbands words if he is guilty of some mortal sin they should wait till he is purified but a husband can abandon his wife if she is found to be blemished, diseased or deflowered. When a wife drinks spirituous liquors, who is of bad conduct, rebellious, mischievous or wasteful, a husband can take another wife. The husband is the God for the woman and is the highest goal. A wife should get up from bed before her husband and elders, should eat after they have eaten, should occupy a seat lower than that of her husband or elders. A virtuous wife is one who is distressed when her husband is distressed, who is delighted when her husband is in delight, who is emaciated and wear dirty clothes when her husband has gone on a journey and who dies on the death of her husband. Wife is pativrata who is doing work like a slave, like a hetaira in affording sexual pleasure, like mother in offering food and like a counsellor in adversity.

Women whose husbands are away from home should avoid

1 Manu, IX 72, 80
2 Matsya purana 210 12
3 Brhadapati on pativrata
4 Pudma purana
amusement, perfumes, flowers, ornaments, festivals, and laughing. When husband is gone abroad, wife's face should look pale and distressed. She should embellish her body. She should be devoted to her husband. She should be without (full) meal and should emaciate her body.

On the other hand Yajnavalkya and Narada Smriti are more liberal than Manu in dealing with women's status in society. They say that women are to be guarded. Guarding of a wife from evil can succeed only by being devoted to her and not by beating her. Husband had the power of physical correction as that of teacher over a pupil - a father over a son viz. he should administer beating with a rope or thin piece of bamboo on the back but not on the head. In his commentary on the Adhikara Vidhis of Jaimini's Mimansa, Madhavacharjiya discusses rules relating to the personal capacities and incapacities of women. He explains the vedic text as to the performance of sacrifices. "Darsa Purna Masabhyam Swargakamo" - meaning that one who is desirous of attaining Heaven should perform the sacrifices of Darsa and Punamasa. Since there is no masculine gender attached in any word in the text.

1. Samkha Likhita
2. Yajnavalkya 1 81 1 72, Narada 161, 16-18, 181, 80-81
women are included in the "Swarog a Kamo Yajeta" for they are not excluded from the three regenerate classes competent to perform sacrifices. This is the Sidhanta or the conclusion of the Sage Jaimini.23

Sabar Swami's comment on Fourteenth Aphorism of Jaimini as to the property rights of women reveals that women also had the capacity of owning wealth or property. At the time of marriage when the bride is presented to the bridegroom, the father of the bride is required to utter the following: she (the bride) should not be prevented (by the bridegroom) from acquiring Dharma, performing religious acts, from acquiring wealth and from fulfilling her legal desires.

2.4 Biological Difference

Women are considered weak, inferior and dependent because of their biology and hence are denied an equal status. This argument is successfully turned down by many writers. According to them, certain biological features of men and women alone can not be counted for considering women to be inferior to men or vice versa. Instead, it is even claimed that, it is in order to hide certain biological inferior position of men against women namely, female creative capacity to

conceive and create human beings, man devised social institutions like marriage, parenthood, paternity, patriarchy making livelihood an exclusively masculine prerogative and stressed that man is superior to woman. Whether man or woman is superior or inferior biologically is only a secondary question. The first question to be answered is whether there is any marked biological difference between man and woman to support the theory of male superiority and so male control and dominance resulting in male aggressiveness towards women.

Man or human is just one of the species of the animal world. Biologically humans are called Homo sapiens. Humans include both male (man) and female (woman). Human embryos form and develop according to the set patterns in their chromosomes as boy or girl. Studies conducted on human biology revealed that there are both similarities and differences. The two sexes have male as well as female hormones and, one out of 23 pairs of chromosomes relates to sex. According to one opinion human foetus do not develop sex differences before a period of seven weeks after conception. Even after birth, the sex hormones start acting on the different organs of the body and develop the sex characteristics.

25 Biologists are divided in their opinion as to whether nature endowed man and women with equal qualities or different qualities.
babies both male and female think and act in similar ways. It is only at the later stage through different patterns of socialisation, children develop gender differences. Another opinion is that in every aspect of human biology, differences are noticed.

Studies reveal that the gestation period for boy babies averages 5 to 9 days longer than for girl. The growth rate of different systems of the human body shows differences between male and female. At birth girl babies are already better developed than boy babies. Their bones are stronger, their reflexes are better co-ordinated, and their skulls literally are in better shape. When they grow, the bones and muscles of little girls in general develop their strength earlier. Puberty occurs in girls at an average age of 12 and in boys at an average age of 14. The differences in the human anatomy of male and female in the brain functioning, in the hormonal and endocrine systems, in sensory capacities, in the amount and distribution of fat on the body, in temperamental and intellectual capabilities are studied. It reveals that human male is driven by the "reproductive imperative" into the range of enjoyable masculine behaviours, the fight for dominance over others, aggression, promiscuity and polygamy whereas for the females, the optimum genetic strategy is exactly the reverse - a life of selecting a suitable life partner and incubating and rearing the offspring. It is this
reproductive imperative of man which is found to be responsible for emotional differences in man and woman that could be the cause of conflict between the two.²⁷

Visvo spatical skills tests conducted on man and woman revealed better skills and intelligence response with men in matters relating to space and mathematics whereas women's nurturing instinct led them to their involvement more in the domestic affairs of the family.²⁸²⁹ FMRI and PET reveal that the brains of two sexes are subtly but significantly different. Men and women are different and they act, react, or perform differently.³⁰ There are differences in the mental lives of men and women for the mind is just what the brain does for a living. Women unlike men have the power of creating new ideals and translating them into action.

Men and women differ significantly in terms of their leadership styles. Men are more likely, to describe themselves in ways that characterise a 'transactional' style of leadership. That is, they view

²⁷see Prof Jeffrey Grey, Medico Legal Aspects of the article "Brain studies point to differences - Man's world, women's world", The Hindu, Apr. 3, 1995, at 1
²⁸New technologies of research on Brain vis. (FMRI) Functional Emission Tomography Imaging
²⁹(PET) Position Emission tomography the differences in brain functioning in men and women
³⁰see Sharon Begley, Gray Matters, Society and the Arts, News Week, March 27, at 42, (1993)
performance of a job as a transaction - exchanging rewards for services rendered

On the contrary, women describe themselves more as ‘transformational’ leaders - that is getting subordinated to transform their own self interest into the interest of the group through concern for broader goals. Moreover their basis of power are identified to be charisma interpersonal skills, hard work or personal contacts instead of organisational statue. By comparison, man is thoughtless, impatient and given to the pursuit of novelty, woman, it is observed, is serious minded and patient. When she has a new idea, it seems to have its birth in the tender depths of her heart. One sphere where male superiority is unquestionably accepted is in the muscular strength. The functions, the very act of cognition, feeling or remembering of the brain explain the fact that men are more violence prone than women. Women are twice as likely as men to suffer major depression. Recent studies conducted by neuro-scientist on the subjective well-being of two sexes when both are working, revealed that working mothers experience more confidence in coping with stress than their husbands. These observations prove the

Kanika T Bhal, “The war of the sexes”, The Times of India, (Bombay ed) June 1 at 1. (1995)

fact that, they are different biologically but not to the level of labelling women as weaker and are to be denied equal status in the society. In essence, women are stronger than men in all respects except physically.

2.5 Biology versus Gender

"Of all the beautiful things in this world there is nothing so fascinating for a man as a beautiful woman. The stars attract man, the new crescent moon is fascinating, the sunset and the sunrise draw out his admiration. But every beauty is dimmed by the beauty of a woman”.

Women are objects of admiration and enjoyment. They are adored for their femininity, and beauty is their real virtue. From their childhood days, they are advised to bother about their appearance to keep themselves gentle, humble and soft. Because when a woman is married, her “self” should be less than the “male-self” to match the power of her superior spouse. These are the social values that the elders of a typical family consider very important in bringing up girl children. Physical superiority of men over women is the attribute of biological difference but what is more firmly and explicitly differentiated between

men and women by the family and in the society is in the "gender inequality." While sex is defined as the biological similarities and differences between and among women and men, gender is defined as the social construction of the relations between women and men among various groups. Gender is distinction in words which makes the distinction of sex in things. Existence of two sexes resulted in social differentiation, into two kinds of societal groups viz., men and women. There became two norms, and two cultures a male and a female, at times a third one shared by two sexes. These social differentiation have manifold social consequences, one of such consequence being the dominance of the male over the female. During their childhood days, children get used to identify themselves with their own sex elders in the family and peer. They learn gender typed behaviour from the environment and it becomes necessary from the day they were born to the day they would die. Social expectations about their gender confront them every day and at every place in the world, whether they are at home or outside, at leisure or at work leading to social differentiation, marginalization and exclusion of the fair sex.

The Indian caste system and the family structure witness the existence of inequalities in status and discrimination attributed towards the members of the weaker stratum. A person’s sex has been at times made the sole criteria in the treatment that he/she would receive under the laws of various countries in the world. Despite the recognition of women’s equal status and need of women’s contribution for the human development and peace and acceptance of basic human rights of women as inalienable and internationally protected right, inequality persists.

Patriarchy, the phenomenon of male dominance, got accepted very firmly in every walk of social interactions. ‘Man’ became the measure of all things and ‘sexism’ became a pervasive social problem. Human society became structured in terms of gender hierarchy, wherein discrimination between man and woman was maintained in terms of domination and subordination. The subjugation and exploitation of woman continued, proliferated in numberless dimensions. While her mother image was adored, her individual ‘self’ was degraded, devalued and made invisible. Passivity, submission and self-denial resulted in low

Chart 2. Low Status of Women Leading to Domestic Violence

STATUS OF WOMEN

FACTORS NORMALLY ASSOCIATED WITH THE STATUS OF A WOMEN

Biological  Historical  Religious  Cultural  Economic  Illiteracy  Political
  
Traditional  Development

GENDER

MALE  FEMALE

Constitutional guarantees for equality

DE JURE EQUALITY vs DE FACTO INEQUALITY

LOW STATUS OF WOMEN

EXPLOITATIONS, ABUSES AND VIOLENCE
self esteem. Feeling of being inferior, unwanted and burdensome developed the stereo-type of the emotional, immature and helpless neurotic. Her dependence was exploited and atrocities that were committed against her were either explained in terms of biological weakness or in terms of male superiority in a structured society.

Despite the legal protection, inequality persist because the laws are intended to serve to reinforce patriarchal social relationships that is based on male norms, male experience and male dominance. Women's experience is totally excluded from the law. Law is not only non-neutral in the general sense, but also male in a specific sense.

A question that still remains unanswered is what is the reason for such individual differences being seen in terms of gender? It is because of our cultural legacy through law, legend and life which regards women as weaker. As said by Justice Krishna Iyer, womanhood is poetized, romanticised, despised and enslaved.

2.6 Causes for Gender Inequality

2.6.1 Historical Causes

History is the study of the past conducted in such a way as to illuminate the present and even to guide men's action for the future.

---

*Visa Ravindra, K.G. Rama, Supra, note 1 at p 57*
History helps us to understand ourselves and our fellows and the problems and prospects of mankind. The history of human civilisation illuminates the causes of the gender disparities When human society was saturated with tensions and confrontations between opposites, they produced changes in the human life pattern Earlier society, which was gender-free and where human conduct was ruled by nature, in due course produced dialectics of freedom and authority, faith and reason and between human free will and all other impersonal circumstances.

Virtually unlimited freedom of individual to enjoy the company of women and to live in harmony according to natural impulses was the primitive form of human union. The primitive tribes of antiquity living mainly as hunters raising from place to place, neither had permanent habitat nor, were having a firm organisation of a family. Only at a later cultural level, by the assimilation of spiritual elements and the requirement for increased working power for agriculture, the human union was produced with firmness, sustenance and enduring relationship. These social and economic motives decided the contraction.

of marriage and formation of families and communities. When man and woman were living for the sake of life in common, the labour was divided between them, the husband had his tasks, and the wife had hers, and they satisfied each other's wants, each putting his or her special capacities into the common stock. There was then the friendship and partnership between husband and wife producing values and happiness.

They were nature worshipers and lived by the rhythm of nature. According to them, life came from food and food came from soil. Man came from woman and woman gave life. Earth (soil), fertility and cycle of procreation, decay and renewal were attributed to womanhood. Mother Goddess was the eternal symbol of life. This led to the concept of 'Shakti', the strength of man. In India this was the social order during pre-vedic and vedic period. There was nothing as a dominant male but rather, a reasonable acceptance of the biological difference which gave men and women clear cut earthly functions.

After the Aryan infiltration to the soil and embedding their own culture, there seems to be a slow decline in the status of women.

---


[Aristotle, in Nicomachean Ethics, VIII, 12. 7ff cited by ibid, at 18]

[Rama Metha, "Socio Legal Status of Women in India", New Delhi, Mittal Publications, (1987).]
During vedic civilisation women were given a honoured position. The Veda also called as Sruti was considered to be Sanatana dharma meaning the eternal truth. It is peculiar and different from other religions as it is free from dogmas. It is more a pattern of civilisation, the - "ism" of the Indian people. Rigveda considered as the tree of knowledge represented the various aspects of Hindu civilisation when interpreted correctly. According to Swami Dayananda Saraswati, the founder of Arya Samaj, Vedas were to be interpreted in a yogic manner and not in a worldly manner. Accordingly in the original vedic scriptures, there was no image worship, no caste system and nothing about social evils such as child marriages or the prohibition of remarriage of widows. In the beginning of the vedic period, women were fully the equals of men as regard to access to and capacity for the highest knowledge. There were rishikas who were women seers.


\*The Rigveda speaks of the following rishikas viz. (1) Romasa (1, 126, 7), (2) Lopamudra (1, 179, Surrounded by such relatives we have nothing to fear 1-6), (3) Apata (viii, 91, 1-7), (4) adru (ii, 6,8), Visva vara (v, 28,3) and several others mentioned in the tenth mandala such as (6) Ghotha, (7) Tuher, (8) Vagambhirina, (9) Paulomi, (10) Jarita, (11) Sraddha-Kamavani, (12) Urvasi, (13) Saraga, (14) Yanie, (15) Idrani, (16) Savitri and (17) Devayani. The Sama veda adds the following viz., (18) Nodha (Purvarchchika xii, 1), (19) Akrishthabhasa, (20) Sitaiani-vavari (Uttararch chika, 1, 4) and (21) Gaapayana (ib. xxii, 4) and brahmavadus
representing the highest degree of spiritual enlightenment. There never existed any discriminating rule against women. In the later years when the vedic mantras passed through generation, they were more interpreted in worldly manners. Later, the Smrities writers like Manu, Yagnavalkya incorporated local customs and prescribed social sanctions behind them, unlike the vedas which had divine sanctions. The Smrities were followed in time by the puranas and the puranas were followed by another class of literature called Tantras. There were Upanishads also called as vedantas which were said to be the object or the highest purpose of veda⁴¹ Thus there emerged a distinct Hindu social order wherein vices of social conditioning and social inequalities based on Varna and sex emerged.

During the years that followed, three major historic upheavals affected the status of Indian women. They were Buddhism (600-500 BC), Muslim invasion in (600-1100 AD) and the western civilisation in the 19th century. Buddha admitted women to religious orders. There were women Buddhist nuns in the religious spheres. Buddhist convents opened out to women opportunities for education, self-culture and varied spheres of social services in which they made themselves equal.

¹ Max Muller, "The Upanishads (S.B.E) Vol 1, Introduction, at LXXXVI
to men Soma, Anupama, Queen Khema, Sujatha Chapa, Krigantami. Sundari were some of the women leaders of the Buddhist Reformation. All these honours and dignities were given to women, only in the sphere of religion, but at home, the status of women was held in low esteem and their freedom was tightened by the Brahminical code.

Principalities and powers made way for territorial conquests by people from Arabia, Turkey and Persia in different parts of the country. There had been Alexander in the Macedonian in 320 BC, the Huns in the 5th century A.D., the Arabs, Turks in the 11th and 12th centuries, but they went back. Mughals invaded in 15th century and stayed for a longer period till the Europeans reached India.

During Muslim invasion, women's status deteriorated further due to the fear of invaders. There was no security and movement outside was restricted, which in turn denied opportunities to women in community affairs. Even Buddhist nuns who were called as Parivarajikas or "Wandering nuns" who had access to the palace and huts totally disappeared. Women's education and training came to a sudden halt. There were forcible conversions which led to the breakdown of social institutions. Purdah was enforced and rigorous seclusion of women.

"Rama Mehta, Supra, note 40 at p 79"
became the rule. Social evils like sati, child marriage and female infanticides were practiced during this period. The condition of widows became more deplorable. The possibilities of remarriage for widows were not seen for the rest of their lives and they were asked to devote themselves to an ascetic life at home. Deteriorating status of women which began in the post-vedic period continued throughout and was reinforced during different periods of social change by the complete subordination of women by men.

Women became completely dependent on men. To quote Altaker:

"Thus for nearly, 2000 years from 20 BC to 1800, the position of women steadily deteriorated even though a woman is founded by the parents, loved by her husband, and revered by her children. The practice of sati, the prohibition of remarriage, the spread of purda and the great prevalence of polygamy made her position very bad. People tried to arrange the marriage of their daughters before the age of proper understanding and marriage customs compelled the delivery of the bride to the supervision and apprenticeship of her in-laws. A girl who by misfortune lost her virginity, her chance of being accepted in marriage became very remote. Women became
economically, socially, educationally and politically dependent on men”.

When Europeans set their foot on Indian soil, its population was under the influence of various religions like Buddhism, Parse, Islam apart from Hinduism Christianity also entered along with western culture. Indian social order was conditioned by these religious norms which was in turn moulded according to the then accepted cultural patterns of the society.

The status of women at the dawn of British rule saw the maximum decree of deterioration. There were practices such as child marriages, the exposure of female children, killing of female children by throwing them at the junction of the Ganges and the sea, the violence used to make women follow the sati rite and thus, end their miserable existence, the shameful treatment accorded to widows etc. Marriages became professions rather than sacraments, which made women not only objects of pity, but many women sighed in the secret recess of their hearts and cursed for being born as women in this unfortunate country”

Legislations were made to regulate the then existing religious

customs which had the authority of law and which allowed discrimination and subjugation of women. Marriage customs and other customs such as burning of young widows in the funeral pyre of their husbands called, the Sati, the prohibition of widow remarriage, polygamy, child care and guardianship, child marriages, marginalisation of women work as low paid work, were some of the areas which needed the immediate attention of the government even before independence British government enacted laws in matters relating to marriage and divorce.

Indian government after the commencement of the Constitution committed to eliminate the social inequalities undertook reforms in major areas relating to Hindu customs Major changes in matters relating to marriage, divorce, adoption, guardianship, maintenance and inheritance were made in the form of Hindu Code 1956, against severe agitation from Hindu fundamentalists Special Marriage Act, Child Marriage Restraint Act, Dowry Prohibition Act, Immoral Traffic on

Women and Girls Prevention Act, Sati Prevention Act, Equal Remuneration Act, Factories Act, Maternity Benefit Act are the evidences of the sincere attempts taken by the law makers to remove the atrocities committed against women and protect them in certain exigencies.

2.6.2 Cultural Inequality

The status of Indian women is conditioned by the culture of their own time. The word culture is used by the historians to refer to the so-called higher achievements of group life or of a period of history. Culture is also defined as social heritage which is the complex whole consisting of all the ways we think and do, and everything we have as members of society. Culture is transmitted through learning and learning requires social interaction which is transmitted through every generation. Indian culture is identified with the personal enjoyments of those a few Aryan Pundits who dictated the ways of life through religious texts. It developed and got modified along with the civilisation. Indian civilisation is very old, much older than that was at one time supposed. It goes back at least 3000 to 5000 years before the birth of Christ. Indians of these early days appeared to have been highly civilised in many ways with massive buildings, roads and good sanitation. Women of this age as evidence shows were fond of
jewellery, gold, silver and copper and they used cosmetics. They worshipped many gods and perhaps one supreme goddess, a Mother Goddess. This period is called prevedic period during which time womanhood was honoured and worshipped God Rudra Siva, a prevedic God is the first cause who emanates, sustains and reabsorbs the universe into his own substance Though himself inactive and impossible, he is ceaselessly active through his “Power”, his Shakti through which the world comes into being and is again destroyed.

Atharvana Veda quotes, “In Him (Rudra Siva) there is no distinction of person, male and female coalesce into wholeness “Thou art woman, Thou art man Thou art the youth and the maiden too”.

As woman he is Shakti, Maya and Prakrti, the creative power inherent in nature, and as man he is purusha Hindu religion as propounded in the Veda speaks very little about women of their time. However, in available reference there are evidences to show that the position of women was good in the beginning but deteriorated slowly due to the struggles of Aryans and Dravidians during 1000-900 BC. There were invasions leading to unsettlements. The climatic condition in the north had long winters and fishing, hunting and maintaining fire became the chief means of survival. Women had to stay back at home, looking after the young ones, thus perpetually becoming dependent on
men for food and security. There were threats to the safety and well being of women and children from other men and they looked to a known person - a male for their protection. They, along with their children thus became dependent.

A woman was considered never "Svantantra" (independent) and never "had a thread of her own". She was not her own mistress. It is maintained that in childhood she is subject to her father, in marriage to her husband and after his death to her eldest son. Girls were shunned at birth or born to be discriminated, and undervalued in comparison to their brothers. They were exploited and considered as transitory members of their families and helpers to their over-burdened mothers from a very early age. The highest standards of modesty and decorum were expected from her and according to the laws of Manu, if she does wrong she should be thrown to the dogs in a place fragmented by many. A woman at only one stage in her life time enjoyed a dignity of her own, that is when she became a mother, as it is said that a mother is worth thousand fathers!*

"The acharya exceeds by his greatness, their Upadhyayas, the

father exceeds a hundred acharyas, a mother exceeds a thousand fathers."

Mother is superior to Guru, acarya and upathyaya "There is no guru like mother". One may avert the consequence of all curse a mother's curse can never be averted

2.6.3 Religious Discrimination

By religion it means merely recognition conscious or unconscious of a force or power outside man (or men) not subject to the control of a man (or men), which is nevertheless in a constant relation to a man (or men). This recognition as a fact manifests itself in thought, action or abstention from action. But a true religion, it would mean the fundamental principles of all religions which are the consciousness of the divine essence of human soul and respect for its manifestation in human life. It is an approach of tolerance and understanding of the equality of all religions. The philosophical approach of understanding, co-existence and tolerance was the very spirit of our ancient thought. Despite the Indian culture known for its

---

49 Yajnavalkya Smriti 1.35, Santiparva Ch 267, Adiparva Ch 17
50 J. Duncan, M. Derretti, "Religion, law and the state in India," London, Faber and Faber, at 36 (1968).
51 "Delivering a lecture on "Secularism in Indian Ethos," on Apr 29 (1989), President, S.D. Sharma, underlined the principle of Sarva Dharma Samabhaav
tolerance, diverse religions and diverse religious codes flourished. These religious thoughts, actions or abstention from action in the interpersonal relationships of members of different communities have given rise to religious codes of conduct which prescribe distinctly the role, functions, rights and responsibilities of its members in their day to day life. India, being a multi-religious state, comes across various religious faiths each speaking differently in some points about the role, function, rights and responsibilities of women of their religious fold, that too differently at different points of time. Every religion committed assault on women's freedom and identity. In asserting the identity of their religions, whether they be "Hindu, Muslim, Sikh or Christian they made evident distinctions not only in ways of worship and what they held as sacred but also defined the status and right conduct of their women.

However, Islam extolled the highest and noblest aspect of womanhood, that of being a mother. Accordingly, people should respect a woman if for no other reason, at least for the sake of her having borne all the trouble and pain for their well being, for the sake of her sacrifices, for the sake of her pure love and her selfless affection for
them

Whether educated or uneducated, poor or rich, a girl, a wife, a mother in every capacity she is adorable
Islam also gave rights of inheritance to woman as a daughter, a wife, a mother, a sister and in some cases even when more distantly related. A woman never lost her personal rights over her properties whether before or after marriage and she was absolute owner of her properties. In her life time she was entitled to maintenance.

Despite all this, Muslim women are at disadvantage in matters relating to marriage and inter spousal relationship. The unilateral divorce and triple talaq available for the husband and denial of maintenance to divorced women after the Idat period are to the disadvantage of Muslim women. Women are assigned a secluded, constrained, domestic sphere and the freedom to operate in the world of power, politics and authority is reserved only for men, for women are considered to be passive, docile, delicate and breakable and they achieve their best potential through becoming good wives and mothers.

Under Christianity, the first Epistle, Paul, the Apostle to the Corinthians in Chapter VII speaks about women. "It is good for a man

Sheikh M.H. Kidwai, Supra, note 33, at 78
Ibid at 155
Ibid at 150.
not to touch a woman. A wife is bound by law as long as her husband lives, but if her husband dies, she is at liberty to be married to whom she wishes, only in the Lord. But I want you to know that the head of every man is Christ, the head of woman is man, and the head of Christ is God. For man is not from woman, but woman from man. Nor was man created for the woman, but woman for the man."

Christianity and Christian law relating to the status of women is derived from the English law which is in turn based on Roman law. Under Roman law, a woman was completely dependent. Roman husband was given the right even to kill his wife when she wronged. Woman was treated like a slave and had no share in the social economy. Christianity, as introduced by Britishers in India maintained androcentric culture and discriminated against women in matters relating to marriage, divorce and in the participation of religious orders. However, western culture permitted English women to enjoy social interaction and community awareness.

2.6.4 Political factors

In India women's participation in decision making bodies is quite unsatisfactory. Globally on an average women represent a mere 10 percent of all elected legislators and in most national and international administrative structures both public and private, they remain under
represented. The influence of western culture and English education during British periods sensitised political leaders of the plight of women everywhere and initial steps to remove the ulcer of sexual inequality that plagued the human development were taken by men like Raja Ram Mohan Roy and Iswar Chandra Vidyasagar. Mahatma Gandhi encouraged women to take political participation in the freedom struggle producing women leaders who did pioneering work for the advancement of Indian women. There were of course a few very eminent women leaders who served for the cause of the commoner and the down trodden. They are the nightingale of India, Sarojini Naidu, Anne Besant, Dr. Muthulakshmi Reddy, Pandita Ramabai, Professor Karve of Poona, Mrs. R. Ranade, Mrs Sorabi of Poona, Lady Bose of Calcutta and Miss Boss of Lahore.

The problems relating to child marriages, girls education, devadasi system, widows plight were taken up by these women. During the freedom struggle, when Gandhiji made a clarion call, women came out in thousands and they played their full share in processions, demonstrations and picketing. They risked their lives during the

---


partition period in helping their grief stricken sisters. They poured out without hesitation and accepted the challenge in the national movement. Such a mass participation under Gandhiji’s leadership gave women a sense of equality with men - equality which was unheard of in tradition bound Indian Society. After Independence, among the fifteen Prime Ministers we had on date, 1997 Smt Indira Gandhi held the office for the longest term. Eminent leaders like Sucheta Kripalini and Manmohini Sahgal were elected to the Lok Sabha among others during 1957 election. Rukmini Arundale, Violet Alva, Dr Seeta Paramanand and Indira Mayadeo contributed much to the policy decisions of the Government. However, they represented only the elite population. Most of the women political leaders came from urban background with western education and supportive political family background. But in the rural areas and among the peasant population women participation was very less. In all the elections women voters were less than men with marginal exceptions. In spite of Article 326 of the Constitution granting adult suffrage, in 1952, general elections, voters list contained very less number of women voters. Women’s participation as voters.

Sharma, “Principle of sociology”, Asia Publishing House, Bombay 1971 quoted by Vijay Sharma, Supra, note 45 at p 33
as candidate who contested, and as members who won were very less in number compared to men. A study by the Inter-Parliamentary Union reports that the percentage of women in world Parliament has dropped over the years. The ratio is quite disproportionate to their population. 10 Parliaments in the world do not have a single woman representative. There are 33,981 men Parliamentarians in the world, whereas the number of women is only 4,512 (13.28 percent). Only 7.7 percent of the Parliamentary group leaders and nine percent of the party spokespersons are women. In India in 1952 general elections, out of 499 members elected to Lok Sabha, 22 were women. In 1980, out of 524 members, 28 members were women. The present Lok Sabha has a representation of 7.4 percent of women members.

The 73rd Constitution Amendment Act 1992 covering the Panchayat Raj institutions and the 74th Constitution Amendment Act 1992 pertaining to Urban Local Bodies came into force in April 1995 and created more than 500 district Panchayats, around 5,100 Block/Taluk Panchayats and about 2,25,000 village Panchayats, 90 municipal corporations, 1500 municipal councils and 1800 Nagar Panchayats. All these bodies would jointly provide for reservation of seats in the local bodies for women up to 33.33 percent. This has offered women an opportunity to participate in the political process at the grass root level.
The 81st Constitutional Amendment bill reserving one third of the seats in the Lok Sabha is being debated over the issue of a further reservation to lower class women. The bill if passed would empower women further politically. However, to ensure effective participation of women in decision making bodies, various positive measures are to be taken.

The detrimental factors, namely the socio-economic and cultural constraints a woman faces in the society, are to be removed. Many policies and programmes implemented to improve the situation of women failed to achieve the objective and worsened the position of women. The 79th Amendment bill to the Indian Constitution which will bar the politicians from becoming members of the Legislative when they have more than two children is another clear example of such measures.

The biggest obstacle for a woman to pursue a serious political career is her inability to balance her political life with her family life.

Women are identified by their feminine qualities and as such, they are soft and unsuited to politics. The age old ideas of modesty and giving the total responsibility for the home, result in the low level of political participation. Traditional values and norms of behaviour inhibit.

"R. Soreynmoorothy, Women Yet to Climb the Political Ladder, The Hindu, June 17, at 25."
women from asserting themselves as individuals. Women fear that if they choose politics as a vocation they would have to sacrifice their family life.

Women are socialised to accept a home oriented role that is basically submissive and passive and seeking public office runs counter to the traditional sex role. Further women in politics are exposed to humiliations and sexual exploitations. Most of the time when violation of rights are discussed, they are recognised as violations only against men. Women remain invisible victims and are too often forgotten. Women also suffer from discriminatory attitudes of the leaders and threat of violence and character assassination. Progress in female literacy still lags behind the social attitude to women’s education. This constitutes one of the major hurdles to the political empowerment of women. Ignorance and illiteracy are a major constraint in the political participation of women.

The contributive factors for the active participation of women in politics are to make women conscious about their political responsibility, encourage them to participate and to remove the visible and invisible gender bias that run throughout the political experience of society. This can be achieved by giving more and more encouragement to women to participate in the decision making systems.
reservation of seats in local Governments is the most welcome measure where the political leaders will be compelled to give tickets to more number of women candidates. Women must be properly empowered to acknowledge their responsibilities and thus command the status for the role they play.

2.6.5 Economic Factors

In the traditional Indian society where women were ordained to be looked in the nature of a daughter, wife or mother and never in her individual position, their role in any other aspect comes only second to their primary functions of obeying the father, worshipping the husband and taking care of the children.

The educational, economic and political rights having been guaranteed, the social milieu is conductive to the attainment of social equality. At the same time the traditional ideal of Pativrata is strong and trends are in evidence which work against the implementation of the ideal of social justice9. In such situations women working outside the home for remuneration was not favourably received in the society. Kept thus all the time inside as totally dependent on the male wage earners.

women tend to become narrow minded and unfit for social life. This ignorance, poverty and helpless resignation to the kitchen environment have resulted in the low self-esteem in women.

Women nowadays work as lawyers, engineers and technologist, scientist (Physicist and Chemists), accountants and auditors, editors and journalist, public relation officers, business women - those running big business managers and executives and architects. However when compared to the number of men entering these employments, number of women in such unusual profession is still quite less. Employed women do add to the family economy and foster national economic growth. But here to, this is not without strains. Exploitation of working women and sexual harassment in the work place from the employers and the coworkers are considered as major problems. The Supreme Court of India has given a land mark decision in dealing with a public interest litigation brought by certain social activists and non governmental organisations to prevent sexual harassment of working women. This is significant milestone in enforcing the fundamental rights of women workers under Articles 14, 19, and 21 of the Constitution. According to


"Ibid at 81."
the judgement, it shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

All employers or persons in charge of work place, whether in the public or private sector, should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation, they should take the following steps: a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways, b) The rules/regulations of Government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender, c) As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946, d) According to the judgement appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no woman employee should have reasonable grounds to believe that she is
disadvantaged in connection with her employment. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (an appropriate legislation when enacted on the subject) in a suitable manner. Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary to assist the affected person in terms of support and preventive action.

2.6.6 Illiteracy

Knowledge is power therefore for empowering women, the most important acquirement can be education. Education is a human right and an essential tool for achieving the goals of equality, development and peace. It is accepted as a fundamental right in India and as a key to the development of self awareness and plays a decisive part in making women aware of their aspirations, their real potential and their rights. Illiteracy is a major cause of

---

Indian wife to suffer indignity and exploitation throughout their life. Nowhere in the history knowledge is restricted to only men. The Hindu shastras, Quran and the Bible expect both men and women to acquire knowledge.

The social conditions that existed all these years gave only one vocation to women, that is to minister to man's physical needs - their intellect was thought to be of such a low order that when a woman has done anything, particularly foolish or thoughtless and when they are pointed out for their fault, they themselves claimed, "After all I am only a woman!" Female education was altogether neglected and they were constantly kept in a state of domestic degradation and servitude.

According to the Quran, both Muslim men and women are required to pray "Lord, increase me in my knowledge." (20:114) Also the prophet had said "Acquisition of knowledge is obligatory on every Muslim men and Muslim women". He used the words ("Muslimatun") specifically to denote Muslim women so that men do not find any excuse of depriving her of education. The social status very much depends on educational status of women, but in practice Muslim women are given only elementary religious
education. Education gave women a sense of identity, an identification with a certain quality of what they wanted to be—the self image they hoped for.

In India education has different values for boys and girls. The number of girl-school dropouts are more in number when compared to boys. Parents show lack of interests in educating their female children for reasons based on social necessity, their poor economy and culture. Many parents withdraw their daughters from higher education regardless of their scholastic success for the fear that education would create more problems in finding suitable bridegrooms.

2.7 Legal Protection: Dejure Equality Vs Defacto Inequality

Equality between women and men is a matter of human rights and a condition for social justice and is also a necessary and fundamental prerequisite for development and peace.

Equality of all men is said to be the biggest lie ever told for the word, Equality is so wide and vague and taken by itself is almost meaningless. Equality should be understood in its normative sense and not in its formal sense as the mere ostensible legal equality in the sense of absence of discrimination in the words of law. The essence of


*Beijing Declaration, Ch.1, para.1, Supra, note 36 at p 94
equality is to recognise that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience. It also means prevention of discrimination and refusal to recognise irrelevant distinctions. However the concept of equality is not meant to be taken in the sense that men are born with same aptitude and capabilities, but rather in the sense of an "artificial equality or a legal fiction" to be pursued as the deliberate object of social policy. Therefore, equality in its normative sense would also mean recognising the existence of natural inequalities and the presence of certain underprivileged persons or groups. To secure equality, there has to be differential treatment to those underprivileged few thus to bring them up to the same level. Therefore equality in the sense of prevention of discrimination should be understood as refusal to recognise irrelevant distinctions and not the erasure of all distinctions.

Distinctions are the indicators of the values which are legal considerations for making discriminations. Considerations based on natural difference such as birth, colour and sex are to be condemned while those are based on merits or efficiency such as insensitivity.

Mrs. Roosevelt, the chairman of the Human Rights commission (1943).
stupidity, ineducability, irresponsibility to be considered. However, inequality on the basis of sex exists in an extreme form in all societies which are hierarchically structured.

The Constitution of India is the cornerstone of the legal edifice of the Nation. In the Preamble it is said in unequivocal terms that all people irrespective of their sex are entitled to Justice, Liberty and Equality and has assured individual dignity. The Preamble sets out the main objects of the Constitution, which our basic law intended to realise. The word ‘Socialist’ is added by the 42nd amendment to incorporate socialism aiming to eliminate inequality in income and status and standards of life.

Part-III of the Constitution abolished inequality between men and women in many matters but left untouched the private sector of human relationship, the family. Family laws make gross discrimination between sexes. Article 14 declares equality and equal protection to all persons in the enjoyment of their rights and privileges without discrimination. Articles 15 and 16 prohibit discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them in matters of rights, privileges and immunities pertaining to a person as a citizen. Under the constitution any

---

discrimination on the grounds of mere sex was considered as unconstitutional but the state is expressly authorised under article 15(3) to make special provisions for the benefit of women on the basis of protective discrimination. Women are classified as special class for the purpose of favourable treatment under this article which has enabled to bring out legal reforms. Welfare legislations protecting women in matters relating to working conditions of women labourers, maternity benefits, safety and health provisions for women workers in working places equal remuneration are brought out. Privileges given to women litigants under civil procedure code, the provisions relating to women as witnesses, offenders and convicts in criminal laws, consider women as special class for legislative classification. Section 354 of the Indian Penal Code dealing with assault or use of criminal force with intent to outrage the modesty of any woman, section 125 of the Criminal Procedure Code compelling only men to provide maintenance for the wife are considered as protective legislation in favour of woman.

Sections 304 B, 306 and 498 A, apart from general offences of hurt, wrongful restraint and wrongful confinement and the amended Dowry

---

AIR 1951 Cal 563, the court held that the provision of order 25, Rule 1(3) of civil procedure code under which a woman plaintiff may be required to deposit security for costs if she has not sufficient immovable property is ultra vires on the ground of discrimination against women as such.
Prohibition Act and rules, rape and sexual offences in the nature of incest or marital rape and rules of evidence for the proof of the offence, provide very effective procedure for checking against cruelty committed against women within their homes. Even though gender equality is a constitutional guarantee, family laws make gross discrimination between sexes. These laws seeking sanction from respective religions codes down grace woman.

Hindu women’s right to adopt a child is granted under Hindu Adoption and Maintenance Act 1956. But the right is denied to a married Hindu woman whose husband is living. As to the guardianship right over a child, father is normally considered as the natural guardian in preference to the mother. The Hindu Succession Act is a landmark in the history of Hindu law and under section 14, women are granted absolute ownership over the non-ardhana property possessed by them. The Act makes both male and female children as equal heirs but under Section 23 dealing with the partition of dwelling house.

'Sec 23 of Hindu succession Act Where a Hindu intestate has left surviving him or her both male and female heirs and his or her property includes a dwelling house, wholly occupied by members of his or her family, than not notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares therein, but the female heir shall be entitled to a right of residence therein. Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if, she is unmarried or has been deserted by or has separated from her husband or is a widow.
by denying women, right to seek partition by themselves they are denied justice.

The validity of Sec 497 of the penal code, the offence of adultery, was challenged, because for an offence of adultery only a husband aggrieved could file a complaint and not an aggrieved wife against the adulterer. Secondly the aggrieved wife cannot prosecute her husband who committed adultery. Thirdly, Sec 497 does not take cases where the husband has sexual relations with unmarried women.

This section may at first sight appear as if it is beneficial legislation intended to serve the interests of women but, on closer examination it would be found that the provision contained in the section is a kind of "Romantic Paternalism" which stems from the assumption that women like chattels are property of men. Section 497 is a flagrant instance of "gender discrimination", legislative despotism and male chauvinism.

The apex court on the above question said that the aggrieved man and woman were similarly situated and they were similarly treated by the unpinned provision which did not allow a cuckolded husband to prosecute his wife and the outraged wife to prosecute her husband for adultery. The court explained that the philosophy of this law was that the husband and wife were free to
make up or break up the marriage under the matrimonial law. It was against the husband and wife beating each other with criminal law in a criminal court.  

However, the judicial response in interpreting customs and personal laws of different religious groups seems to be handled with much reluctance. The Bombay High Court justified the exclusion of personal laws under article 13(1) of the Indian Constitution defining law and laws in force for the purpose of constitutional review of laws, because laws are not solely based on religion but are connected with the manners and customs of religious groups and therefore the test of conformity with the fundamental rights is not applicable to such laws.  

Article 19 guarantees women the basic fundamental freedoms of speech and expression, freedom to associate, freedom to take up any occupation so long they are not against the public order, decency or morality. Article 21 of the Constitution in its ambit of personal liberty guarantees woman her right over her body and privacy. Article 23 guarantees a right to the woman against exploitation. It provides “traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”. Part IV of the Constitution envisages directive principles of state

---

70 Ravathu v. Union of India, AIR (1968) S.C. 835  
71 AIR (1952) Bombay 84.
policy which are envisaged as non enforceable in itself but have been held to supplement fundamental rights in achieving a welfare state.

Article 39 lays down certain principles of policy material for women's welfare.

"The state shall in particular direct its policy towards securing (a) That the citizens, men and women equally, have the right to an adequate means of livelihood (d) that there is equal pay for equal work for both men and women (e) That the health and strength of women are not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age and strength Article 42 enjoins the state the duty to provide for maternity relief and human conditions of work.

Part IV A of the Constitution provides certain fundamental duties to every citizen of India. These duties even though cannot be enforced by writs, can be promoted by constitutional methods They can be used for interpreting ambiguous statutes.

Article 51 A (e) provides that

"It shall be the duty of every citizen of India

(e). To renounce practice derogatory to the dignity of women"

The dignity of womanhood, as a special factor of personhood has been the salutary cynosure of constitutional concern With all constitutional
guarantee for equality and dignity of life and legislative measure to combat social evils against womanhood as the agony of reality is, still there is inequality and indignity taunting against women, social evils continue unabated. Law is what law does, and by this performance test law is dead where women are at the victims end.

Despite legal protection inequality persists because the implementation of laws are still greatly influenced by cultural factors like the institution of family, kinship group, descent system, religious and other cultural tradition, caste hierarchy etc and officials are inclined to reinforce patriarchal social values. A woman is exploited inside her home under the cover of security and protection. Manu’s saying that a woman is never independent is even today practised. Woman is prevented from taking decisions even for her own marriage. Her job is decided by the male members of the family. Women today experience violence not from strangers but by their own men in their own homes.

At the global level, United Nations and its specialised agencies serving 184 countries and 5.6 billion people record the new consensus on women’s contribution to equality, development and peace. United Nation is not designed

---

to be only or even predominantly a peace and security organisation. Global actions for the upliftment of women are undertaken under the auspices of the United Nations since 1945. The Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant of Civil and Political Rights, International Covenant on Economic, Social and cultural rights and other like documents emphasise that the achievement of equal and full participation of women in all spheres of activity is an integral part of civil political, economic, social and culture development.

The Charter of the United Nations signifies that human right to equality is the basic right of all mankind. Equal rights of men and women are explicitly mentioned in the preamble to the charter of the United Nations. All international human rights instruments include sex as one of the grounds upon which states may not discriminate.

Human rights are the natural rights of man and every human person possess the right because of the very fact that he or she is a human being. Every person has the right to be respected, and is the subject of rights and possess rights.

"Preamble: We the people of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women."
The bill of rights enacted by the British Parliament in 1689 and the
Declaration of Independence issued by the 13 American states in July 1776
explain about "equality" as the inherent part of any human right discourse 14

The United States Constitution of 1789, the declaration of rights of
man issued by the French Constituent Assembly asserts that men are born and
remain free and equal in rights

The human rights are not different from other rights as they are natural
rights and derive for their sanctity from the soul and the conscience of the
human society and as the Stotic Philosopher of Hellenistic period stated, they
are those rights which belonged to all men at all times, those rights are not the
particular privileges of citizens of particular cities, but are to which every
human being everywhere is entitled of virtue of the simple fact of being human
and rational.

A woman is as much human as a man and she should share freedom
and equality in the interest of the well being of society. In furtherance of
the mandate of the United Nations, the UN Commission on the Status of
Women established in 1946 worked steadfastly at raising the status of women

14 1689 Bill of Rights says that "All men are by nature equally free and
independent" 1776 Declaration of Independence states that all men are created
equal and they are endowed by their creator with certain inalienable rights,
among these are life, liberty and the pursuit of happiness
irrespective of nationality, race, language or religion to equality with men in all fields of human enterprise. It carried out studies and submitted its reports and recommendations to the economic and social council or the promotion of human rights with all concerns. The Commission developed proposals for promoting equal rights for women and eliminating discrimination on the grounds of sex in legal, political, economic, social and educational fields. The Commission submitted its first draft of a declaration on the elimination of all forms of discrimination against women in the year 1966 and a revised declaration in the year 1967. The Economic and Social Council initiated a reporting system on the implementation of the provisions of the Universal Declaration by the Governments and appointed a 15 member working group to begin a drafting of a convention for women in 1973. United Nations General Assembly declaration ensures universal recognition in law and in fact of the principle of equality of men and women. G.A. of the UN in its resolution 41/110, 4th December 1986. G.A. 41st Session, 3rd committee speaks as follows:

"Promotion of the status of women in all its aspects and complete integration of women in society go beyond the problem of legal equality and that deeper structural transformations of society and changes in current economic relations, as well as elimination of traditional prejudices through education and the dissemination of information are required to create
conditions in which women may develop fully their intellectual and physical capacities”.

The 1948 Universal Declaration of Human Rights (UDHR) adopted by the UNGA declares that everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of sex. Under Art 13(b) of the United Nations Charter, the General Assembly is to initiate studies and make recommendations for the purpose of assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The UNGA, the plenary organ of the world body, reflects the sentiments of the world community as a whole and through its resolutions and reminders has wanted the world body to denounce the practice of subjugation of women under ancient laws, customs and practices. Time and again the Assembly has urged the ratification of or accession to the relevant international instruments relating to the status of women. Development decades and programmes concerning women like Women in Development (WID), Gender and Development (GAD) were launched and women’s concern was taken as focus in which all programmes related to development. In 1951, the International Labour Organisation (ILO) adopted a convention concerning Equal remuneration for men and women workers for work of equal value.

also adopted conventions concerning night work of women in industry in 1948
and convention concerning maternity protection 1975 was declared as the
International year for Women and 1976-1985 as the United Nations Decade
for Women with the goal and objective of equality, development and peace.
Under Article 55(4), the United Nations is to promote universal respect for and
observance of human rights and fundamental freedom for all without
distinction as to race, sex, language or religion. Under Article 56 members are
to have an obligation to take joint and separate action in co-operation with the
organisation for the achievement of the purposes set forth in Article 55.

The Convention on the Elimination of all forms of Discrimination
Against Women (CEDAW) was drawn in 1979 which entered into force in
1981 with the required 20 ratification. The convention calls for the equal rights
of women regard-less of their marital status in all fields viz. political,
economic, social, cultural and civil.

Article 1 of convention defines discrimination against women as "any
distinction, exclusion or restriction made on the basis of sex which has the
effect or purpose of impairing or nullifying the recognition, enjoyment or
exercise by women irrespective of their marital status on the basis of equality

1 Year Book of UN 1986 Ch.XVIII at 785
of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

State parties are to take appropriate measures to eliminate discrimination against women in all matters and if necessary to modify the existing social and cultural patterns of conduct of men and women. The convention also expects the state parties to eliminate prejudices against women that are found deep rooted in customary practices.

The 1984 UN World Survey on the role of women in development marked the first official recognition that women have a major concern in all development issues and was seen as a turning point in the history of women's issues in the international arena. At the end of the women's decade in 1985, the world conference on women held in Nairobi, Kenya. Forward looking strategies for the advancement of women were unanimously adopted on the basis of which the ECOSOC in 1987 brought out medium term plan for women and development strategies were adopted by the international NGOs to get violence against women and women's rights onto the world's human rights agenda. Other conventions of a special importance for women are conventions on Children in New York in 1990, on Environment and

---


UNGA adopted the declaration on the elimination of violence against women in December 1993. The UN Human Rights Commission appointed a special rapporteur to report on the global problem of violence against women including domestic violence and traditional practices that were in the past seen as cultural or social matters outside the domain of human rights.

Low status of women in unequally structured society and within the patriarchal family has manifested in various kinds of exploitations and atrocities. The domestic violence in the nature of abuse of the weak by the strong by age and gender has handicapped the development of national well-being and refinement of the Indian culture.

---

Specific legal measures, plans of action, proper training of enforcement officers and public officers handling the situations to eliminate gender inequality and violence against women are to be strengthened. The state cannot shun away its responsibility to protect the victims of domestic violence on the basis of family privacy. Number of public shelters and short stay homes should be set up to accommodate victims of domestic violence in times of necessity. Institutions handling cases involving women should be represented in more numbers by women. Judges, lawyers, prosecutors and police officers whether men or women must be trained to understand the problems of violence against women in the existing structure of the society. An overall view taken on the basis of various factors associated with the low status of women in society and family are rooted in the outmoded patriarchal traditions and culture. Women everywhere have come to understand that equal status and opportunity for women as integral to social justice is the birth right of female humans. Women are to come forward to assert their right of equality as equal partnership with men is not any concession but is a constitutional mandate.