CHAPTER- 2

HISTORICAL ACKGROUND
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Women along with men, from time immemorial, have formed an integral part of social structure. The role played by women in various walks of life has contributed to the evolution of values, which have counted for what may be described as all around progress. The women’s status is the measuring yard for assessing the standard of culture and society of any age.¹

In India, the history speaks that women are considered as a divine force but the multi-cultured India society placed the women at different positions.² The position of women in India from pre-historic time to the present day indicates the general lines on which they have confronted with various types of humiliation, tortures and exploitation.³ There is no uniform status of the women in the Indian society. However, civilization showed the overall upliftment of women’s position. In Indian society there have been infinite variations in the status of women according to cultural malices, family structure, class, caste, property rights and morals.⁴ Indian society has been a tradition bound society in which the traditionalists had presented an idealized picture of women substantiating their claims on the basis of certain references from the Vedic and classical literature.⁵

Historical background of the women in the different period of the history will give clear picture of women development. Unlike her western counterpart, the Indian women are part and parcel of society and culture which goes back into the past. If woman has a particular conviction or acts in a specific manner, it is due to the pattern that has been ingrained in her by the fairly stable social structure of a thousand years.⁶

The highest place has been accorded to women in Indian religious and philosophical thoughts. The Indian philosophy poses the women with dual character, on the one hand, she is considered fertile, patient and benevolent but on the other hand, she is considered aggressor and represents ‘Shakti’.⁷

³ Supra Note 1, at p. 1.
⁴ Supra Note 2, at p. 1.
⁷ Supra Note 2, at p. 1.
The position, power, status and disabilities of the daughter, the wife and the widow went on changing in course of time. Women once enjoyed considerable freedom and privileges in the spheres of family, religion and public life, but as centuries rolled on, the situation went on changing adversely. The position which women occupied in Hindu society at the dawn of civilization during the Vedic age is much better than what we ordinarily expect it to have been.

To study the position of women, it is necessary to describe the position of women in Hindu civilization from prehistoric times to the present day.

2.1 Position of Women in the Vedic Period

The position of women during the vedic period was glorious on account of freedom and equality. Vedic era was the golden era in so far as equality of status and personal freedom of women were concerned. During that period, women enjoyed a fair amount of freedom and equality with men. A woman was regarded as an equal partner, friend and equal sharer in joys and sufferings of her husband’s life in Vedic era. The social structure in the Vedic period admitted the equality of women with the men Hymn XXI of the Rig Veda extols the virtues of women as even greater than those of men.

There is not one verse, not even a world indicating a slightest humiliation or an insult for women in the Vedas, instead, women are friends in life’s journey, creator, mentor, guide and partner in all fields. The very word ‘Mahila’ is made up of the root महत with इत्यार्थ which means the repository of greatness and goodness.

The birth of daughter was not less welcomed in the vedic age in comparison to the son because of the equal status given to them to offer scarifies to gods; the son was not absolutely necessary for this purpose. But the son was preferred to the daughter generally. The Atharvaveda contain Charms and rituals to ensure the birth of a son in preference to that of a daughter (III 23: VI, II). However the birth of a

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9 Id., at p. 337.
11 Supra note 6. at p. 2.
12 Ibid.
13 Supra note 8. at p. 4.
daughter was not a source of consternation to the family in the Vedic Age. There are no reference of the feeling of dejection and dissatisfaction at the birth of a daughter which lead to a female infanticide in the Vedic Literature. But if female infanticide had at all been practiced, it must have been confined to a very small section of society. Smriti writers regard the destruction of an embryo as the most heinous crime; the murderer of a child born alive could not have escaped their thundering denunciation.

In the Vedic age the period before marriage was utilized for imparting education to the girls. The Upanyan or the ceremonial initiation in to Vedic studies was as common in the case of girls as it was in the case of boys, but it generally confined to higher classes of the societies. The initiation ceremony of girls used to take place as regularly as that of boys at the normal time. This ceremony was followed by a period of discipline and education which was regarded as very essential to secure a suitable match. The Vedic age held that Brahmacharya discipline and training was as much necessary for girls as it was for boys and if this most important religious sanskara of upanayana was not performed in the case of girls, then they would be automatically reduced to the lower status in the society as that of the sudras. After their upanayana girls used to follow a discipline more or less similar to that of boys. As for as possible they were taught by their near relatives like the father, the uncle or the brother or the lady teacher.

In the Vedic Age Women students were divided into two classes, Brahmadevinis and Sadyodvahas. The students belong to Brahmadevinis class were lifelong students of theology and philosophy; whereas student belonging to Sadyodvahas used to pursue their studies till their marriage.
In the Vedic period there were many educated women who used to follow teaching career either out of love or out of necessity. According to orthodox tradition itself as recorded in the Sarvanukramanika there are as many as twenty women among the ‘seers’ or authors of Rigveda. Visvavarta, Aopala, Lopamudra, Shashiyasi, Ghosha, Indrani and Sachi are mentioned, among others, as composers of hymns of the Rigveda. The fact that women were considered competent to compose religious hymns is proof enough that they had few religious disabilities at the time.

Women also took part in the intellectual and spiritual life of the community. Sacrifices were performed and oblations offered to the deities, jointly by husband and wife. Women who lived in free love and who are professional dancers were not looked down upon by society as mentioned in Rigveda. Urvasi was a dancer whom King Puruvas married.

Child marriage was unknown in early Vedic period. Girls were married at a fairly advanced age in that period. All the marriages were not arranged by parents and guardians in the Rig Vedic times as girls were of mature age, but generally parents arranged the marriages.

In the Rig Vedic age, marriage does not appear to have been compulsory for girls. Girls could grow old in their parent’s houses without public censure and in case a man had an only daughter she was considered as good as a son and was not given away in marriage to another household.

Early in the history of our civilization brides naturally received affectionate and respectful treatment in their new homes as they were grown up and educated at the time of marriage. The Vedic marriage hymn lays down that the bride should immediately take the reins of the household from her elderly relations. Elders of the Vedic age treated the brides with very great consideration, regard and affection. They on their part used to observe proper decorum and treat their elders with utmost reverence. They could join them at the common table, and take part in conversation.

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23 Ibid.
25 Ibid.
26 Ibid.
27 Ibid.
28 Ibid.
29 Supra note 8, at p. 90.
More vital for the wife’s happiness is the treatment which she receives from her husband. Since Indo-Iranian times the husband and the wife were regarded as the joint owners of the household. The Vedic word for the couple ‘dampati’ etymologically means the joint owners of the house.\(^{30}\)

The Vedic Marriage ritual does not enjoin the duty of obedience upon the wife. Though Supreme authority was clearly vested in the husband, the wife’s position was one of the honourable subordination. In the Vedic and Epic society, wife was treated with utmost courtesy and regard. It was well recognized that the wife was the ornament of the house. The wife herself was the home. The home management was under her direct charge and ordinarily, her views were to prevail there. Early Indian literature does not recognize, even theoretically, the power of physical correction in the husband. In practice also it was probably very rarely exercised in the Vedic times.\(^{31}\)

In the Vedic period monogamy normally prevailed in the Hindu Society. The word dampati ‘two joint owners of the household’ excludes a third person from the conjugal life. The ritual too does not provide for the association of more than one wife in the normal sacrifice. The Vedic gods also are monogamous. In practice, however, polygamy often prevailed in the rich and ruling sections of Society. References of polygamy are fairly numerous in the Vedic literature. The Rigveda in one place compares a person attacked on all sides by his enemies to a husband troubled by his jealous wives.\(^{32}\)

Nevertheless despite polygamy, which lowered the status of women on the whole it would seem as though the normal Vedic household had one husband and one wife. The Vedic Index says that “a Vedic Indian could have more than one wife... but the evidence points to the wife first wedded alone being a wife in the fullest sense”.\(^{33}\)

Purdah system was not prevalent in the Vedic period. The Vedic marriage hymn requires the bride to be shown to all the assembled guests at the end of the marriage ritual.\(^{34}\) The hope was further expressed that the bride should be able to

\(^{30}\) Id., at p. 92.
\(^{31}\) Id., pp. 93-94.
\(^{32}\) The Rigveda, R.V.R. 105.8 quoted in Supra Note 8, at p.104.
\(^{33}\) Macdonell and Keith, V. II, (1912) at 478, quoted in Misra, Preeti. Supra note 6, at 5.
\(^{34}\) Supra 9. quoted in Supra Note 8, at p. 167.
speak with composure in public assemblies down to her old age.\textsuperscript{35} The presence of ladies in social and public gathering was a normal feature in the Vedic times.\textsuperscript{36}

In the Vedic times, the custom of the bride purchase was known, but not held in esteem; the son-in-law in such cases was described as a vijamata or disreputable son in law.\textsuperscript{37} Dowry system was prevalent in rich and royal families only in the form of movable gifts.\textsuperscript{38}

**Position of widow:** The custom of sacrificing the wife at the husband’s death existed among the Aryans in the Indo-European period. But the time they entered India, it had gone out of Vogue. Funeral hymns of the Rigveda does not mentioned of any such custom. The Funeral hymns of Rigveda refers to women with their husband living coming forward to anoint the corpse before it was consigned to flames, and contains no reference whatsoever to any widow immolating herself on her husband’s funeral pyre.\textsuperscript{39} It is, therefore, clear that the Vedic age expected the widow to remarried than to immolate herself. Instead of allowing widows too be burnt, Vedic Aryans thought that it would be better to encourage widows to live and increase the population by levirate or remarriage.\textsuperscript{40}

In the ancient time there were three courses open for the widows. They could either pass their remaining life in widowhood, or have some children by levirate i.e. niyoga or remarried. The custom of levirate or niyoga was quite common in ancient times in several civilizations. The reasons for the prevalence of these customs are the primitive ideas about women and children. The women were regarded as a species of property, which passed into the husband’s family on her marriage. It was considered that she was married not only to a person, but also in his family so if her husband died, his brother or any other near relation would take her as wife or raise children on her. So under the system of niyoga if a woman’s husband dead or incapable of procreating children she was allowed to have conjugal relations with her brother in law or some other near relation till she got some children. If a widow was unwilling, she was not to be compelled to submit to niyoga.\textsuperscript{41}

\textsuperscript{35}Tilak, \textit{Mahabharata} quoted in Supra Note 8, at p. 167.

\textsuperscript{36}Ibid.

\textsuperscript{37}Ardhakavi, \textit{Sant Bhaita} quoted in Supra Note 8, at p. 167.

\textsuperscript{38}Supra note 6, at p.3.

\textsuperscript{39}Supra note 8, at p. 117.

\textsuperscript{40}Id., at p. 118.

\textsuperscript{41}Id., pp. 143-144.
Side by side with *niyoga*, the widow remarriage also prevailed in Vedic society. There is however no doubt that widow remarriages used to take place not infrequently in the Vedic age.\(^{42}\) The following hymn of the Rigveda is of particular importance which indicates the prevalence of marriage of the widow to the brother of her deceased husband.

*Rise, come into the world of the living*

..........................*thee as a lover.*\(^{43}\)

This hymn is addressed to the widow by the brother of the husband who led the weeping woman from the grave of the deceased to his home.\(^ {44}\)

The Atharveda also lay down a ritual to secure the union of the new couple in heaven in the following hymn:

\[ \text{IX.5, 27.8} \]

\[, \text{IX.7, 27.8} \]

This hymn did not regard the conduct of the widow who remarried, as in any way disreputable. There is no suggestion in this human to marry only with the brother of deceased husband. It would therefore appear that some widows in the Vedic age used to marry outside the circle of their deceased’s husband family.\(^ {45}\)

The Vedic Aryans regarded the woman as untouchable during her monthly period. During this period even the sight of their person and the sound of their voice were to be avoided. Child bearing was regarded as the special function of women after marriage.\(^ {46}\)

As far as proprietary rights during coverture were concerned, in early times these rights were recognized very tardily in almost all civilization. For a long time there was no question of the women holding any property, she herself was an item in

\(^{42}\) *Id., at p. 150.*
\(^{43}\) *Rig Veda XVIII. 8*
\(^{44}\) *Supra note 24, at p. 49.*
\(^{45}\) *Supra note 8, pp. 150-151.*
\(^{46}\) *Id., pp. 194-195.*
the moveable property of the husband specifically in case of patriarchal societies.\textsuperscript{47} They were given away as gifts in the Vedic age as would appear from several hymns, which glorify the gifts of generous donors. In the Rigveda also there is a famous gambling hymn, in which there is a reference of wife being staked away by the husband.\textsuperscript{48} But this happened only in exceptional cases.

If we consider the proprietary right of the wife, vis-à-vis, her husband, the theory approved in the Vedic age was that the husband and the wife should be the joint owners of the household and its property. But this theory of joint ownership helped the wife only in securing a number of minor rights and privileges like right to maintenance. In reality she could hold or inherit no property.\textsuperscript{49}

The position of women on the whole was fairly satisfactory in the Vedic age with few exceptions. The community as a whole had showed proper concern and respect for women allowing them considerable freedom in the different activities of the social and political life.\textsuperscript{50}

### 2.2 Later Vedic Period

During the later Vedic period, the women had suffered drastic hardships and restrictions. The changes which took place during this period in the position of women were gradual. The main reason for declination in the position of women was the development of certain eschatological notions which led to belief that sons alone were competent to redeem their parents from hell and daughters were incapable of performing these spiritual functions. As these ideas began to take root, women were valued only as the vehicles for bearing sons and when they were unfit for or unwilling to perform this function, they were considered as useless. This whole idea about the position of women is emphasized in the Atharva Veda, the Brahmanas and the Upanishads.\textsuperscript{51}

Atharva Veda was the scripture of some Aryan tribes who later settled down in India but were powerful enough to enforce on the older settlers their religious ideas and social theories. In the Atharva Veda there is a good deal of magic and,
witchcraft, spells and incantations, which is not found in the Rig Veda. The religious ideas embodied in the Adharva Veda had a direct bearing on the change of attitude of society towards women.\(^{52}\)

The other important branch of later Vedic literature was the Brahmanas or ritualistic precepts. The Brahmanas may be said to have been dominant in the Sixth century B.C.\(^{53}\) The Brahmanas are the set of literary documents subsequent to the four Vedas. They are extremely valuable, as they are a source of one of the most important period in the development of India. They described the social life of the period between the Vedas and the Upanishads. The Brahmanas represent the ideology of a sacredotal caste which played upon the natural religious instincts of the Hindus. The clever Brahmins managed to control the people. Primarily, the priests realized that they must control women. Her freedom was a hindrance to the power and domination of the priests. The Brahmins felt that this must be conquered, so with verbal agitation, they succeeded in lowering the position of women. They considered her an inferior creature without a mind, with a headless cruelty they also decided that gradually even religious rights must be taken away from women.\(^{54}\)

During the age of the Brahmanas the volume of Vedic studies became very extensive and as a natural consequence society began to insist that who wanted to undertake Vedic studies must devote a fairly long period, of about 12 to 16 years to the task. For women this is not possible as they used to be married at about the age of 16 or 17 year, and as a consequence lady Vedic scholars began to rarest of rare.\(^{55}\)

Vedic sacrifices also became very complicated at this time and could be properly performed only by those who had studied them minutely. As a consequence, the participation of women in sacrifices gradually became a mere matter of formality. Many sacrificial duties that could be once discharged by the wife alone came to be assigned to male substitutes in the age of the Brahmanas.\(^{56}\) In some rituals like the Srastrarohana women continued to take a prominent part and recite the Vedic mantras down to 500 B.C., but the practice became gradually unpopular.\(^{57}\)

\(^{52}\) Id., pp. 54-55.
\(^{53}\) Id., at p. 55.
\(^{54}\) Supra note 6, at p. 9.
\(^{55}\) Supra note 8, pp. 201-202.
\(^{56}\) Supra note X, pp. 201-202.
\(^{57}\) Supra note 8, at p. 202.
However, certain Brahmanas considered women competent to perform sacrifices and read the Vedas. They also mention some sort of initiation for women as the Upanayana for men on the occasion of some sacrifices. But all this fell into disuse in later period of Brahmanas and the marriage ceremony being considered equivalent of Upanayana for women.58

Like the Rigveda, the Brahmanas text have described wife as helpmate of man at the sacrificial ceremonies. The presence of wife had been made indispensable for the accomplishment of a sacrifice. The Satapata and Vajaseneya Brahmana made the association of wife as an indispensable condition precedent for the performance of sacrifice. The man continued to be half as long as the wife did not join him. She was a silent partner in sacrificial ritual but in ceremonies relating to the bringing about the birth of a son or for conferring blessing on the progeny, she had to play an active part.59

In general the Brahmana texts are more unfavourable towards women what with their ideas of ceremonial purity and the omnipotence of rituals and sacrifices. Actually it was a transitional stage with regard to the position and status of women. In the Satapatha Brahmana it is told that a wife should take her meals after her husband finished his and a wife who does not answer back to her husband even under grave provocation is praiseworthy. A wife who is disobedient enjoined to be taught obedience by physical force. The Maitryani Samhita places women on at par with dice and drink and describes her as one of the major evils in society. She is declared to be untruth itself in human society and is connected with Nirriti, the genesis of darkness or calamity. The Taitaraya Samhita describes her as inferior even to a bad man.60

The Brahmanas are filled with passages of explanation regarding sexual matters and tremendous overemphasis is on the physical aspect of womanhood. The Brahmanas emphasised the natural desire for a son, not alone for the idea of ethical and personal immortality, but for the transmigration of souls. In the Brahmanas literature there is a passage observing that the son is the hope of the family, but the

58 Supra note 24. at p. 59.
daughter is a source of trouble to it. The importance of the birth of son was emphasised at every step. Elaborate ceremonies began to develop during the Brahmans period for ensuring the birth of sons. The following verses from the Aitareya Brahmana show the importance of a son:

Since now, men desire a son

Both those that have and those that have not knowledge,

what doth a man gain by a son?

Tell me that, O Narda

A debt be payeth in him

and immortality he attained

that Father so seethe the face

of a son born living

The delights in the earth.

The delights in the fires

The delights in the water of living beings

Greater than these is that of a father in a son.

By means of a son have father ever

......................attain heaven”.

(Aitareya Brahmanas 7.13).

These verses revealed the greatness of a son. According to this passage the son is a boat of Salvation, a light in the highest heaven. A wife is a comrade but daughter is a misery. These highly intricate eschatological notions raised the importance of the male but lowered the position of woman.
But all this does not mean that there was no respect for woman. The views of all men regarding women could not be dominated by the priest. Some men insisted upon worshipping the power of motherhood. In the Brahmana Literature, the women speculate and argue with men, just as Draupadi does in the Epic. But religious observances were allowed to maidens primarily for the purpose of securing a husband. There is a verse in the Satapath Brahmana which states that a daughter who has been given in marriage by her father must remain faithful to her husband. When Sukanya is reminded of her decrepit, ghost like husband and she is urged to leave him she replies:

“To whom my father has given me,

him will I not abandon, as long as he lives.”

(Satapatha 4.15.9)

During the composition of the Brahmanas polygamy became a common feature of the social system, which leave negative effect on the status of women. There are many other verses in the Brahmanas which re-emphasizes on the low estimation of women. But these Brahmanical writings did not report the full story of the life of those days in so far as the wishes of the majority of people were concerned regarding the ‘feminine’. It is likely that many women did not realize at the time that some religious leaders were trying to subjugate women hood. Much of the spiritual freedom which Hindu women had formerly possessed was wrested from them in the Brahmana.

2.2.1 Women in Upanishads

The next groups of Vedic text are the Aranyakas which were followed by the Upanishads. The Aranyakas are usually found as supplements to the Brahmanas. The world ‘Upanishad’ is derived from the root ‘Shad’ which means ‘to sit down’; ‘Upa’ mean ‘nearby’ and ‘ni’ means ‘devotedly’. In words together the sitting down of disciple near his teacher to receive instructions. Their subject matter is symbolic or allegorical speculation of the ritual. The Upanishads take an absolutely different path.

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63 Supra note 6, at p. 10.
65 Ibid.
Their subject matter is ‘gyana’ i.e. knowledge, leading to the realization of ‘brahma’ or ‘atman’. Being philosophical in nature Upanishadic texts cover many subjects from household activities, man-woman relations, myths or creation and mystic aspect of Brahman etc. They rarely refer to any aspect of women.66

The Hindus’ love of philosophic speculation is dominant in these sacred scriptures.67 The Upanishads do mention many women who were engaged in philosophical discourses. The Chhandogya Upanishad also provides that women could study the Vedas and could become Brahamvadini. The Brihadaranyaka Upanishad makes it more clear that in education, women were no less than men. Women used to play an important part in discussing abstract metaphysical questions. They occupied higher position in assemblies of scholars and in royal assemblies.68 Some Hindu women as Uma, Gargi and Maitryi were notable for their learning as is evident from the philosophic discussions reported in the Upanishads.69

As in the Brahmans, so also in the Upanishads, there are instructions regarding sexual matters. There is explicit justification of forcible sex violation of a woman by a man.

"if she should not grant him his desires, he should bribe her, if she still does not grant him desire, he should hit her with a stick or with his hand, and overcome her, saying ‘with power, with glory I take away your glory!’ Thus, she becomes inglorious”.

(Brihad-Aranyaka 6.4.7)70

It is true, that due to certain economic and social reasons a son was desired but it does not mean that in the Upanishad period there was no proper respect for the girl child.71 There are references which clearly indicate that the equal social and religious status was allowed to the boy and girls in that period. In that period it is noteworthy that a daughter was desired and the parents went through a religious ceremony for

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66 Supra note 59. at p. 17.
67 Supra note 6. at p. 11.
68 Supra note 59. at p. 24.
69 Supra note 6. at p. 12.
71 Supra note 59. at p. 21.
fulfillment of that desire.\textsuperscript{72} Brihad Aranyaka Upanishad recommends a certain ritual to a householder for ensuring the birth of a scholarly daughter.

\begin{quote}
"...............that a learned daughter be born

to me ! that she attain the full length of life"

...........They are likely to beget her.
\end{quote}

(Brihad-Aranyaka 6.4.17)\textsuperscript{73}

However, daughter does not help a father to attain the sense of security which a son is able to provide. The following verse from the Brihad Aranyaka show the importance of son.

\begin{quote}
"By his son, a father stands firm in the world."
\end{quote}

(Brihad-Aranyaka 15.17)

The condemnation of a barren woman is continued throughout the centuries from the Vedas into the Upanishads. In Matreya Upanishad false teaching is compared with a barren woman.\textsuperscript{74}

In Upnishads, mother was classified not only with a father, teacher and guest but also with a deity. The custom of female slaves was still prevalent in that period. The Chandogya Upanishad also says "that a man who know certain mystic love"...........should never abstain from any women."\textsuperscript{75}

The universal unitary reality, which constitutes the central concept of the Upanishad, is identified with various powers both human and divine. It is also identified with "a woman and the maiden too."\textsuperscript{76}

### 2.3 Status of Women in Post Vedic Period

The main sources of post Vedic period is the Sanskrit literature including Sutras, Epics, Classical literature, philosophical works and Budhist and Jain Canons and various commentaries on Smritis. All these sources are called non-Vedic and

\begin{itemize}
\item \textsuperscript{72} Supra note 6, at p. 12.
\item \textsuperscript{73} Supra note 60, at p. 171.
\item \textsuperscript{74} Supra note 6, at p. 12.
\item \textsuperscript{75} Id., at p. 13.
\item \textsuperscript{76} Ibid.
composed in the post Vedic period. These various sources describe the position and status of a woman in the post Vedic period.

### 2.3.1 Women in the Grihya Sutras

It is the Grihya Sutras literature which describes the domestic sacrifices in which women used to take part in the post-Vedic period. They deal with the various ceremonials other than domestic sacrifices that were performed at different stages of the life of an individual. The eight forms of marriage are recognized by the Grihya Sutras. These eight form of marriage were: (1) Brahma; (2) Daiva; (3) Prajapatiya; (4) Arsha; (5) Gandharava; (6) Asura; (7) Paisacha and; (8) Raksha.

The Brahma form is described as the giving away of a daughter by her father to a bridegroom of his selection after decking the bride with ornaments and ‘pouring out libations of water’ as in the case of valuable gifts. In the Daiva form a girl was given in marriage to a legend priest officiating at an important sacrifice in recognition of his learning and efficient performance of the sacrifice. In Prajapaya form the bride was not given by her father but by a guardian. In the Arsha form the girl was married according to the prescribed rules after her father received a pair of cattle, a cow and a bull. The Gandharva is love marriage, pure and simple. In Asura marriage a bride price negotiated and settled and paid before a marriage. In Paisacha marriage bride is either duped or physically empowered by the bridegroom. Raksha is marriage by capture. There are various religious ceremonies in Grihya Sutra for the performance of marriage.

The marriageable girl of the Grihya Sutra period was not a child but a young lady. Some Sutras make provision for the girl being in her menstrual period at the time of marriage. This indicates that child marriage had not come into vogue by the Grihya Sutra period. But minimum age for marriage is no where clearly laid down.

Sacramental notions of marriage in Grihya Sutra were fast effacing the individuality of women and reduced her to an appendage on man. As to women’s right to independent ownership of property, it is clear from the Grihya Sutra that a married woman could not inherit wealth nor have any right to the property of her

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77 Supra note 59, at p. 41.
78 Id., at p. 42.
79 Supra note 24, pp. 62-63.
80 Id., at p. 68.
husband; all that she could own was some movable property in the ornaments and other things brought from her parent’s house by way of dowry.

All this shows, that the position of women, in the Grihya Sutra period deteriorated still further from the later Vedic Period.\(^1\)

### 2.3.2 Women in Manusmriti

Apart from the Sutra literature another major source of the post Vedic society is the Smriti literature. But in all Smriti literature Manusmriti is the most important source book of that period. The Manusmriti has been regarded as the earliest attempt in India to deal systematically with social philosophy. Among Dharmshastra Manusmriti was the earliest and most standard and authoritative work on the Hindu Law. It represents the Hindu life and culture of that time.\(^2\)

It is Manu’s code that has had the most negative effects on Indian Women for countless succeeding generations. Even today, it is his laws which keep millions helpless in the prison of Hindu orthodoxy. Manu was the first who legally assigned to women her definite place in the scale of society. But his laws reflect a conflict even within himself regarding his valuation of woman as a spiritual entity on the one side and as a unit in society on the other.\(^3\) Raising the women upon a magnificent pedestal Manu presented her as the source of all good for the adoration of man; than brutally throwing her down from the height where he had himself placed her, he saw in her the genus of evil and cast her at the feet of a master.\(^4\) While examining the religious rights of the Indian woman in Manusmriti; the only divinity offered for adoration by the women was her husband; the only religion imposed upon her was family affection.\(^5\)

Manu enumerates many laws directing a woman’s conduct in different stages of her life toward husband, family and society. He attempted to set up male dominated society by increasing the authority of man over women. As a result of which woman had suffered drastic hardships and restriction as propounded by Manu.\(^6\)

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\(^1\) Ibid.

\(^2\) Supra note 59, pp. 45-46.

\(^3\) Supra note 6, at p. 13.


\(^5\) Ibid.

\(^6\) Supra note 2, at p. 2.
With regard to the birth of a daughter, Manu has not shown any dislike anywhere in his work. Manu regards the daughter as an object of highest tenderness.

“One’s daughter as the highest object of tenderness;
One must bear it without resentment.”

Manusmriti IV. 185

According to Manusmriti daughter is to be brought up with as much affection and care as is bestowed upon the male child; rather greater kindness is to be shown to her as she is physically more tender and her emotions too are more delicate.

Manu is very particular about the maintenance and well being of the women. He says:

“Women must be honoured and adorned by their father, brothers, husbands and also by brother in laws, who desire much prosperity.”

Manusmriti III. 55

“Where women are honoured, there the gods rejoice, but where they are not honored there all rites are fruitless.”

Manusmriti III. 56

“Where women grieve, that family quickly perishes but where they do not grieve that family ever prospers.”

Manusmriti III. 57

“The homes on which women not being duly honoured, pronounce a curse, perish completely as if destroyed by black magic”.

Manusmriti III. 58

“If a wife be pleased, all the house is pleased and if she be not pleased, all is not pleased.”

Manusmriti III. 62

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58 Supra note 59. at p.46.
"Therefore they are ever to be honoured at ceremonies and festivals, with ornaments, clothes and food by men who desire wealth".

Manusmriti III. 59 \(^{89}\)

Thus for Manu, women must be honoured on every occasion of life. Consistent with these sentiments, Manu makes slander of women punishable with fine.\(^{90}\)

With regard to women's education one might condemn Manu as he was against women's education. Manu has nowhere mentioned about their education for spiritual and intellectual development. He lays down that:

"The marriage of women is her Vedic sacrament; for her the service of the husband is equivalent to reside in guru-grha; and domestic duties correspond to the tending of fire". \(^{91}\)

Manusmriti II. 67

Manu did not treat women at par with men so far as recital of Vedas is concerned. He was of the opinion that the woman was neither eligible for the study of the Vedas, nor for use of mantras in performing sacraments except marriage.\(^{92}\)

Manu normally contemplates a pre-puberty marriage, but he also contemplates marriage taking place after puberty. This is quite clear from his statement:-

"At thirty years of age a man may marry a beloved girl of twelve years or he is thrice eight years, (he may marry a girl of eight years) if his religious duties would (otherwise) be unfulfilled (he may marry at once)."

Manusmriti IX. 94.

\(^{89}\) Supra note 87, pp. 51-52.
\(^{90}\) Samatani, Lila (Dr), 'Status of Women in Vedic Time', 1993, p. 98.
\(^{91}\) Supra note 87, at p. 25.
\(^{92}\) Supra note 59, at p. 46.
“A girl having reached the age of puberty should wait three years for a husband, but at the end of that time she should herself chose a husband of like caste”

Manusmriti IX. 99

Thus the normal age for the marriage of girls according to Manu was twelve, though in exceptional cases he permitted their marriages at the age of eight also. He further laid down positive and objective test for judging the suitability of a bridegroom by which he warned the father not to give away their daughter to men devoid of good qualities.

Manu was totally against the custom of taking price for a bride. In his own statements: No father who knows the Law, must take even the smallest gratuity for his daughter, for a man who through avarice, takes a gratuity is a seller of his offspring.

Thus Manu has severely condemned the acceptance of money by the father of the girls from an intending bridegroom. He strongly advocated monogamy though in exceptional cases polygamy was also practiced. Manu no doubt states that the husband should contract a second marriage only with the consent of the first wife, but her permission was merely a formal affair. If the wife refused to give it, the husband could still carry out his plan of the second marriage. If after that event a self respective wife found it impossible to live with her husband and proceed to leave his household, she was to be compelled to stay with him. The only concession that Manu shows to her is to permit her to stay with her parents, provided she did not claim any maintenance. All this treatment laid down for the wife is a natural consequence of Manu’s theory that marriage establishes the supremacy of the Husband over the wife.

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93 Supra note 87. at p. 260.
94 Supra note 59. at p. 50.
95 Supra note 90. at p. 108.
96 Supra note 8. at p. 108.
Manu has assigned household duties to women.

"To bear children, to take care of them when born and to oversee personally the ordinary affair of life, these acts each for each depend on the wife.

Manusmriti IX.27

The next important duty expected of the wife is that:-

"She must always be cheerful and clever in household business, with the furniture well cleaned, and with not a free hand in expenditure."

Manusmriti V. 150

She is further required to avoid drinking, spirituous liquor, associating with wicked people, separation from the husband, rambling about, sleeping at unusual hour and dwelling in other’s houses. These are the causes of the ruin of women.

Manu puts certain restraints on the women in the form of certain duties:-

"him to whom her father gives her, she must obey alive, and dead must not disregard".

Manusmriti V. 151

"Husband must always be worshipped like a god by a good wife, though of bad conduct or debauched, or even devoid of good qualities."

Manusmriti V. 154

"Wife’s marital tie and duty do not come to an end even if the husband were to sell or abandon her"

Manusmriti IX 46.

"The good wife of a husband, be the living or dead must never do anything disagreeable to her husband."

Manusmriti V. 156

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97 Supra note 87, at p. 249.
This all shows that Manu wanted an absolute control of man over woman. She should not have independent will, her thoughts, actions, out worldly behavior were controlled by one or the other male. In the laws of Manu woman was always supposed to be under the control of man in all circumstances.

"In her childhood a girl should be under the will of her father; in her youth, of her husband; her husband being dead, of her sons; a woman should never enjoy her own will."

Manusmriti V.148

"Day and night should women be kept by the male members of the family in a state of dependence."

Manusmriti X.2

"She must never wish separation of herself from her father, husband, or son, for by separation from them a woman would make both families contemptible."

Manusmriti V.149

"No act is to be done according to her own will by a young girl, a young woman, or even by an old woman, though in their own houses."

Manusmriti V.147

Thus it can be said that in Manu’s Laws women does not deserve independence in any stage of life. So far as the punishment for disobeying the husband are concerned, Manu says,-

"By violating her duty towards her husband a wife gets blame in the world, is born of a jackal i.e. on being born again, and is tormented by diseases by sin."

He further says-

"A wife, restrained in mind, speech and baby, is not unfaithful to her husband, attains the abode of husband, and is called virtuous by the good."

Manusmriti V. 105

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98 Supra note 87, pp. 131-132.
99 Supra note 59, at p. 59.
100 Supra note 87, pp. 130-131.
101 Ibid.
On the contrary Manu consider the wife as the half of her husband, According to him, man does not make a whole by himself alone but attains completion in the company of his wife. The husband is one with his wife. A wife is obtained from the gods; she is not received like cattle and gold in the market. She is obtainable only as the result of man's meritorious acts done in his previous life and not other wave. He further says,- "The husband who wedded her with sacred texts, always gives happiness to her both in season and out of season, in this world and in the next world".\(^{102}\)

Manu recognized only a limited proprietary right of women. He has not devoiced women from right to property, on all the stages of life, as a daughter, as a wife, and as a widow. Unmarried daughters were entitled to one fourth of the share of patrimony received by brothers.\(^{103}\) Again, daughter can get equal share, in her mother's property, whether she is married or unmarried.\(^{104}\) She can also inherit maternal grandmother's property.\(^{105}\) It is also stated that brother less girl has full right over the property of parents.\(^{106}\)

As regards married women i.e. wives, Manu hold that they cannot have any property of their own. But they can own stridhana.\(^{107}\) Even widow had full rights over stridhana.\(^{108}\) Wife is the pronounced successor to the wealth of her husband and in her default daughters. He says,- "that as a person is born through a son, so is the he through a daughter; the daughter and son therefore are equal: if the daughter is alive, how can anyone else take away the estate of the father."\(^{109}\)

But contrary to these statement as to proprietary right of women he also says,-

"that wife, son, slave, these three are said to be without property, whatever property they acquire is his to whom they belong."  

Manusmriti VIII. 416.

\(^{102}\) Manusmriti IX. 118. quoted in Supra note 80. at 110.

\(^{103}\) Manusmriti IX. 192. quoted in Supra note 80. at 110.

\(^{104}\) Manusmriti IX. 193. quoted in Supra note 80. at 110.

\(^{105}\) Manusmriti IX. 130. quoted in Supra note 80. at 110.

\(^{106}\) Stridhan "According to Manu Stridhana is of six kinds: That which is given before the nuptial fire, that which is given an occasion of the bridal procession, that which is given in taken of love, that which is received from brother, her mother or father, quoted in Supra note 96. at 111.

\(^{107}\) Ibid.

\(^{108}\) Manusmriti IX. 13, quoted in Supra note 59. at 64.
He further put the limitation for using even on stridhan: "Woman should not make expenditure out of the family property belonging to several or even out of her own wealth, without the consent of her husband."

Manusmriti IX. 199

So there are contradictions in the views of the Manu regarding woman’s proprietary right. But it can be said that in the Manu’s code women are not fully debarred from right to property.

The woman as mother was undoubtedly the object of great honour. Manu says:-

".......Mother is thousand time more venerable than the father."

".......Mother ....... Must not be treated with disrespect .........."

"He who forsakes his mother.....without a sufficient reason.......must be avoided."

"He who defames his mother..... or his wife..... shall be compelled to pay 100 panas."

"Obedience towards those three i.e. mother, father, teacher is declared to be the best form of austerity."

"Mother, father, and teacher are declared to be the three world."

Thus it is clear that Manu has bestowed very high status to the mother.

In the Manu’s Code the condition of the widow was not as miserable as it became later on. The custom of tonsure or sati appears to be unknown to him. Widow was only required to lead a chaste life and other restrictions were imposed upon her. She was not looked down upon as inauspicious and therefore, not debarred from taking part in ceremonial festivities. She was allowed to live a normal life like any other woman in the family. But Manu opposed definitely to the marriage of widow. He says— "nowhere is a second husband declared for virtuous woman; in

\[1\] Supra note 87, pp. 243-244 & 280.
\[11\] Supra note 6, at p. 14.
the procedure of marriage there is no declaration about the remarriage of the widow; a maiden can be given only once. 112 This closely shows that Manu does not permit the widow to remarry on any account.

Manu has shown regard for the women in various ways. In crowded streets the path has to be made clear for them. A woman who has been pregnant for two months or more, shall not be made to pay a toll at a ferry. If she has no proper guardian, the King is to look after her interests and properties and punish, like thieves those relatives of her that misappropriate her property during her lifetime.113

Manu’s code and sanction left their marks permanently on the future status of the wife. There is a peculiar technical term ‘adhivedana’ mention in the Manusmriti which means ‘forsaking a wife and taking another.’ It implies that a wife might in certain cases be deprived of her conjugal rights which were transferred to another wife taken by her husband later on. Manu says,-

“The barren wife shall be superceded in the eighth year, in the tenth whose children die off; in the eleventh, she who is bearing daughter only; but immediately she who talks harshly. 114

Manusmriti IV. 80

He has laid down different rules for a man contemplating separation. He also permits a wife to remarry if her previous marriage was not consummated after the lapse of a certain number of years. Thus, Manu was the principle law maker of the conservative Hindu period. His prime objective was to safeguard the interest of the family and society at the expense of individual liberty. 115

On the whole it can be said that some negative statement occur in the Manusmriti against women. But he has also tried to give respectable status to women in the society. Thus the laws of Manu show various attitudes, both appreciative and deprecative, toward women. From some of his critical statement regarding women one should not conclude that he was women hater.

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112 Supra note 59. pp. 61-62.
113 Supra note 90. at p. 112.
114 Supra note 59. at p. 60.
2.3.3 Women in Purana Tradition

Purana’s tradition is helpful in understanding and reconstructing the socio-cultural and political history of early and later periods.\(^{116}\) The Purana contains in it not only Vedic trends but even anti-Vedic, non-Vedic and also pre-Vedic trends. They were aimed at expanding the Vedic tradition without ignoring the later traditions. Though the rites, ceremonies, usages and religious view on which most of the Puranas lay emphasis are different from the Vedic tradition, but they do not ignore the Vedic tradition, instead they try hard to build on the foundation of the Vedic tradition.\(^{117}\)

Before the Purana period women were considered to be of the same status as that of the Sudra and they were gradually excluded from the study of and acquaintance with higher theology and philosophy. Since by nature women are more religious than men, a new type of religious literature was evolved to meet their needs and aspirations. This was the Pauranic literature. This literature enunciated the principles of Hinduism in a homely, easy and attractive manner, illustrating them with a number of religious stories. Religious people made provision all over the country for the exposition of purana to public audiences.\(^{118}\)

The Purana are eighteen in number and contains religious stories or “ancient tales”. There is a combination of praise and blame for women in the Puranic literature. In spite of prohibitions laid upon the feminine, there is outstanding praise of goddesses, who in the Puranas occupy a position of great importance. The idea of goddess being the Shakti, or energy of her husband took definite form in Hinduism. But in some verses the association of womanhood with deification is scarcely recognized.\(^{119}\)

There are many verses in the Puranas those depicts the position of women in various stages of life.

A number of vows and regular practices are mentioned in the following texts of Puranas for procuring a male child.

\(^{117}\) Id., at p. 25.
\(^{118}\) Supra note 8. pp. 357-358.
\(^{119}\) Supra note 6. at p. 18.
According to Garuda Purana,-

"a son has to be got by some means or other there is not final peaceful way for a person who has no son, and never heaven."\(^{120}\)

**Garuda Purana II.3.10.**

The text of Skanda Purana State that,-

"a person, who has no son, is not fit to be invited on auspicious occasions or in the rite of the manes".\(^{121}\)

**Sakanda Purana II 142.**

The Skanda Purana further orders that the house of those who have no sons resembles funeral grounds, the manes deities along with sages do not partake of meals of such places.\(^{122}\)

This all shows the importance of son in the time of Purana, but it does not mean that birth of daughter is an unwelcome event in that period. The text of Matsya Purana categorically denounces a person who destroys an embryo and equates this act with the killing of a Brahmana.\(^{123}\) The Vishnu Purana enjoins that such person or even those who are in contact with them go to hell.\(^{124}\) According to Brahmanda Purana, the removal of this sin is not possible even by austerity.\(^{125}\)

The passages of Puranas reveal that care was taken of those girls who were of unusual births.\(^{126}\) Some passages also reveal the practice of gifts of girls to illustrious personages. But the Skanda Purana refers to the gifts of slave girls only.\(^{127}\)

It is noticeable that the text of Skanda Purana enjoins that twelve is the proper age for marriage in the case of a girl.\(^{128}\) In the purana tradition, the best period of a woman's life is believed to be when she is between eight and twelve years. Padma
Purana\textsuperscript{129} enjoins the age of marriage in case of the bride, the best is when she is eight years old. According to Brahma Purana\textsuperscript{130} a girls should be married of after the age of four and before she reaches her tenth year.\textsuperscript{131}

In Purana tradition monogamy was ideal. Brahmaivarta Purana\textsuperscript{132} States that only that person is happy who has one wife. However, the Purana text reveal a number of cases of polygamy. The text of Skanda Purana\textsuperscript{133} reveals that polyandry was prevalent among certain castes.\textsuperscript{134}

According to Garuda Mahapurana\textsuperscript{135} a man is at liberty to marry a second wife in the event of his first having no issue after eight years of marriage. It further says that a woman is protected by her father in infancy by the husband in youth and by her son in old age. She has no separate and independent living.\textsuperscript{136} The wife of an absented husband shall renounce all frolics and forgo the pleasures of mixing with the society, or of sigh seeing and merry making. She shall not smile.\textsuperscript{137}

There are many other references in the Garud Purana which lower the status of women:

"A man should defend his own self even at the cost of wife."

\textit{Garuda Purana} 109.1

"No confidence should be reposed in women."

\textit{Garuda Purana} 109.114.

"A Husband is at Liberty to summarily discord a wife."

\textit{Garuda Purana} 95.21\textsuperscript{138}

As to the condition of widows Agni Purana depict a very miserable and depressing picture of the condition of a widow. She is said to be most inauspicious. It

\textsuperscript{129} Padma Purana, Uttarakhand 1.20.67, quoted in Supra note 116, at 73
\textsuperscript{130} Brahma Purana 165.7.13.14, quoted in Supra note 116, at 73.
\textsuperscript{131} Supra note 116, at p. 73.
\textsuperscript{132} Brahmaivarta (Prakritkland ) 6.64.
\textsuperscript{133} Skanda Puran VII. 1.37.19.
\textsuperscript{134} Supra note 116, at p. 85.
\textsuperscript{135} Garuda Mahapurana 115.64.
\textsuperscript{136} Id. pp. 115.63.
\textsuperscript{137} Id. pp. 95.29.
is ordained that even a glance at her should be avoided. If a widow is seen when one is starting out, one should come back; for if one goes he is sure to die. The blessing of widows is like the hissings of poisonous serpents; hence a householder should be afraid of their blessing, as he should be afraid of demonesses. She is also warned to hear any news regarding love or love sport. It is also said that, she should not see any beasts coupleating, she should not sleep on a bed stead. The text of Bramavaivarta Purana orders that a widow should keep herself away from decoration and she should not look into mirror.

Skanda Purana also gives details about miserable condition of the widow. It lays down that the widow should always take one meal a day and never a second. She should not sit in a bullock cart even when about to die.

The custom of the tonsure of widows seems to have been borrowed from the purana tradition. Reference to this practice is available in the Skanda Purana, it state that the tying up into a braid of hair leads to the bondage of the husband. Therefore a widow should always shave her head. It is added that, if it is not done, it is harmful to the relative of the dead husband.

As to custom of sati Purana are not silent. The texts of Purana gives a detailed account of procedure of sati. A woman committing sati is given a holy bath, adorned with ornament, is made to put collyrium in her eyes, flowers and sandal paste; she is asked to wear the holy thread; her feet are decorated with lac-dye. If she committed any sin or adultery, she is to get purified and then ascend the funeral pyre.

There are also texts in the Puranas those prescribe certain duties for wife. The ideal conduct of a house wife is described in it in too open words. She was to be open hearted to her husband, respectful to his brothers and sisters, devoted to his mother, smiling even to her co-wives, courteous to her husband’s friends and hateful to his enemies. A wife, who discharged all these duties, was the true pativrata.
According to Padma Purana, only that wife deserves to be called *pativrata* who acts as a servant in work. If she has many co-wives, she worships her husband at the beds of her co-wives where he sleeps.\(^{147}\)

Puranas Tradition also lay down the duties of husband towards the wife. Skanda Purana\(^{148}\) relates that one, who does not behave properly with his wife duly married to him, attains great sin.

There are a number of Purana-passages revealing the free and frequent movement of the maidens on the city-roads and their presence in social and ceremonial gatherings, which show that purda system, was not prevalent in the Purana's tradition.

### 2.4 Women in the Epics

The two great Epics i.e. Ramayana and Mahabharata still exert a great influence on the life and mind of people in India. The women characters of the Epics have been held as an ideal by Indian women. These Epics highlight the fact that many attitudes towards woman were found in that period which are still prevalent in the present times.

#### 2.4.1 Women in Ramayana

The Ramayana is indubitably one of the supreme classics of the world, One of the most ancient, and unquestionably secular in its origin; yet it is also unique in its abiding involvement in the cultural, social, ethical, religious and spiritual consciousness of the people of India.\(^{149}\)

The Ramayana, the life history of the great king Rama is a fairly “Unified heroic poem”. There are many teaching of Vedas or Puranas regarding the womenhood which are reaffirmed in the Ramayana\(^{150}\).

The birth of daughter in those days, as even now, was a source of anxiety, in as much as she was to be given away in marriage. Gift of daughter through the

\(^{147}\) Id., at p. 130.

\(^{148}\) Skanda Purana V. 3 ,121. 4-6.


ceremonies of marriage was, nevertheless, an important and religious duty of the father. In few classes of the societies women were given Vedic education.

In the epic presence of unmarried girls on special occasions was considered auspicious. Women were able to perform sacrifices alone even without their husband. Wife had the right to perform sacrifices with her husband; in fact sacrifices could not be performed without her. Thus in the absence of Sita, Rama had to perform sacrifice along with her image.

It shows that wife being accorded somewhat equal status in religious matters with her husband in the epic period.

It is said in the great epic,

"That there is no other gift better than that of a wife to the husband in this world. She, who has been given away as wife by her father to one, shall be his even in her after life."

"According to the Vedas and various other sacred texts, wives are inseparably blended with their husband."

(Kiskinda Kanda 24.3)

The Ramayana has mentioned that woman's spiritual guide is her husband, even if the husband is poor, of a disreputable character; he should be ungrudgingly obeyed by the wife. The greatest virtue of a woman is ministering to his needs.

The life of a woman was to be unremitting service of a constant round of duties towards in-law, husband, guest, servants together with their household and religious obligation. Wife has to sacrifice her own interest and every personality for her husband and his family. All this was by no means an easy task. Therefore, she was to be trained for it from the very childhood.

As to purda system in that period it is observed in the Ramayana that there was no objection if women come out in public on the occasions of marriage, swayamras,
sacrifices and public calamities. It would follow from this that they should remain in purda in normal life.\textsuperscript{159}

Polygamy was also prevalent in the epic period, specifically in the royal families. Regarding this custom it is mentioned in Ramayana that there can be no greater grief for a woman than this.\textsuperscript{160}

In the great epic too the state of widowhood was considered as a great calamity, which was even feared by the women of aristocracy. Widow's hopes and happiness were shattered for ever even if she had hundred sons. A widow feels uprooted and her honour destroyed. She was considered as an object of pity for herself and for her relatives.\textsuperscript{161}

There is no case of sati in the Ramayana which shows that custom of sati was not prevailed in that period.\textsuperscript{162}

The Ramayana, when compared with the earlier traditions, shows a general degeneration of the position of women. It is said in a passage, that women as a rule are fickle, and have regard for their husband only during the days of their good fortune. Though attached to them in prosperity, women, in adversity reprimand their husband for their thoughtlessness, take them to task and abandon them, such is the nature of women. Neither benefits received, nor learning, nor gifts can secure the heart of a woman; surely women are unstable. This passage shows the negative attitude of the society toward the basic nature of women.\textsuperscript{163}

The character of Sita is a beautiful illustration of how no woman, however devoted, could live up to the ideals of \textit{pativrityam} set by masculine standards.\textsuperscript{164} She is a paragon of feminine perfections, and from the time the Brahminic ideal of wifehood was established, Sita has been held as an example to be followed by Hindu women, down the centuries to the present day. Sita's greatness is in the annihilation of her individuality which has been the general ideal of perfection. Sita had no life,

\textsuperscript{159} Supra note 8, at p. 168.
\textsuperscript{160} Id., at p. 181.
\textsuperscript{161} Supra note 150, pp. 174-175.
\textsuperscript{162} Supra note 8, at p. 121.
\textsuperscript{163} Supra note 24, at p. 187.
\textsuperscript{164} Id., at p. 195.
apart from her husband. Never a harsh word escaped her lips even when treated almost inhumanly by her husband.\textsuperscript{165}

The unsupported suspicion concerning the character of womanhood which were expressed by the revered Rama and abandonment of Sita in order to placate public opinion and cultivate virtue among the subjects have not helped forward the ethical progress of womanhood in India.\textsuperscript{166}

The Ramayana ideals have guided the Hindu society for ages; the attitude of man of making woman suffer for no fault of her still persists. Thus it was again for the notion of extreme form of chastity recommended for woman, which was responsible for restriction of her liberty and movement in the society.\textsuperscript{167}

Throughout the long and eventful history of Indian womanhood the story of Sita has been the mainstay of many Hindu woman whose lot has been as hard as Sita's and at times even harder. Whatever its shortcomings, the ideal has helped the Hindu woman to suffer her lot bravely and patiently.\textsuperscript{168}

\textbf{2.4.2 Status of Women in Mahabharata}

The Mahabharata, primarily an itihasa, puts forward great claims. It is a Samhita, Purana, Katha, Dharmasastra. It is main sastra which enable man to attain heaven and emancipation.\textsuperscript{169} Its authority in the Puranic religion is so great that it is revered as the fifth Veda.\textsuperscript{170}

The Mahabharata contains old and new ideal as well as different popular practices; it also propounds moral law of the Dharmasastras. It is a curious mixture of history and mythology. History relates to particular man and people in the past but the mythology relates to their type in the present, past and future.\textsuperscript{171}

The women as depicted in the great Epic preserve their independence in thought as well as in action. They rose to great heights in every field, such as in the

\textsuperscript{165} Id., pp. 183-184.
\textsuperscript{166} Supra note 6, at p. 29.
\textsuperscript{167} Supra note 150, at p. 143.
\textsuperscript{168} Supra note 24, at p. 184.
\textsuperscript{169} Supra note 150, at p. 7.
\textsuperscript{170} Supra note 24, at p. 119.
domestic, in the service of humanity and in the emancipation of soul. But Mahabharata also traces the story of the fall of the status of woman in the Hindu society. It also deals with various types of societies, which show vicissitude in the status of women.\(^\text{172}\)

In the great Epic, the birth of daughter is not an unwelcome event but it is considered as an happy event.

"Men desires son, daughter and wife for himself"

*Adi Parva. 1.160.3*

Even there are examples which show that some people were eager to have daughter and for that purpose it was ordained that by performing Sradha on second day of the bright fortnight one get several daughter. According to one passage\(^\text{173}\) the good result of visiting a certain holy place was getting a hundred daughters.\(^\text{174}\)

Generally a father only laments the birth of a daughter when he was unable to get an eligible match for her. It was only in these circumstances that she has been declared as a source of pity and distress.\(^\text{175}\) The life of daughters and even adopted daughters at their parental homes proves that they were brought up with great care and affection and were never displeased.\(^\text{176}\)

It is said in the great epic that the son is even as one’s own self, and the daughter is like the son. Despite these expressions of praise for daughters, there are verses in the Mahabharata which shows that a male child was considered more desirable than a female child.

“*A man conquers the world by the birth of a son; he enjoys eternity by that of a grandson: the great grandfathers enjoys eternal happiness by the birth of grandson’s son.*”

*Adi Parva 104.74.38*

\(^{172}\) Supra note 150. pp 13-14.

\(^{173}\) Mbh III.83.189-190

\(^{174}\) Supra note 150. at p. 16.

\(^{175}\) Id., at p. 17.

\(^{176}\) Ibid.
“Man himself is born as his son; therefore a man whose wife has given birth to a son, should look upon her as his mother.”

Adi Parva 104.74.47

“Son support the religion and achievement of men they increase their happiness, they rescue the dead ancestors from hell.

Adi Parva 104.74.99

Certain passages in the epic prove that the maiden were given Vedic education, but this education was gradually being negated to them due to many reasons. One of the reasons was that sacrificial religious education becomes highly specialized and naturally this as such took years to be completed, which was not possible for the girls. General education was imparted to them at home by mother or mother-in-law, the aim of this education was not limited to mere intellectual attainment but character building was considered an indispensable function of that education.\(^{178}\)

Child marriage was not the general rule in the great epic. But there is one verse which prescribed very low age for marriage of girls.

“A person of thirty years of age should marry a girl of ten years of age wearing a single piece of cloth, or a person of one and twenty year of age should marry a girl of seven year of age.”

Anushanika Parva, 44.14

There was a right of self choice to the daughter only in the case where father was unable to found suitable match to her.

“After puberty, the girl should wait for three years.

On the fourth year she should look for a husband herself.”

Anushanika Parva, 44.15

\(^{177}\) Supra note 171, at p. 108.

\(^{178}\) Supra note 150, pp.17-20.
The custom of bride price was undoubtedly prevailed in some section of the community. But it was vehemently condemned by the society.

“A wife should never be purchased.

Nor should a father sell his daughter.”

Anshanika Parva, 44.46

The custom of dowry was also prevalent in the period of Epic. The wealth that one was expected to give to his daughter was according to one’s own status. This injunction may have been prompted out of the sense of duty or justice towards the daughter who had no right of inheritance, therefore dowry was her due.

Monogamy was an ideal even in the epic period, but polygamy was a common practice among Kashatriya. Polygamy does indicate that woman was thought to be property to be collected by man. In giving a daughter as second and third wife, the parents did not have consideration for her future happiness and even her rights. But polygamy was taken so much granted that even an old hero with four wives was thought to be a competent bridegroom for a very young bride.

“To marry more than one wife is not sin among men, it is a sinful for a woman to take a second husband after the first.”

Adi Parva CLX.5

As opposed to polygamy polyandry is mentioned in the great epic which apparently gives same right to woman as polygamy to men. But there is only a single case of polyandry and in that case also the father was most unwilling to give away his daughter.

A very high status was accorded to the devoted wife in the Mahabharata and she was recognized as keystone of the arch of the husband’s happiness.

\[179\] Supra note 171, pp.110-112.
\[180\] Supra note 150, at p. 65.
\[181\] Id., at p. 95.
\[182\] Supra note 171, at p. 227.
\[183\] Supra note 150, at p. 95.
"The sweet speeched wives are their husband's friends on the occasion of joys; they are as fathers on occasions of religious acts, they are as mothers in the hours of illness and woe.

"She is a true wife who is good house wife; she is a true wife whose heart is devoted to her husband. Who is faithful to her husband."

"Even in the deep forest; the wife is the refreshment and solace of her roaming husband. He who has a wife is trusted by all. The wife, therefore, is man's great means of salvation."

Adi Parva 1.74.39-43

"This is our beloved wife dearer even than life. Like a mother she is to be cherished and like elder sister she is to be respected."

Virata Parva 4.3.13

"In all descriptions of misery; there is no medicine similar to wife."

Vana Parva 3.61.29

In some verses of the Mahabharata subservience of the wife to the husband is recorded and her complete devotion is demanded.

"It is the highest and eternal duty of women to sacrifice their lives and to seek the good of their husband."

Adi Parva 160.4

"The wife not adhering to her husband; will be sinful from this date; she will commit as great and painful sin as the killing of an embryo."

Adi Parva 122.17

The wife's duties and obligation towards her husband were of utmost importance. All her duties began with married life when she became the religious

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184 Supra note 171, at p.108.
185 Id. at p.457.
186 Id. at p.89.
187 Id. at p.226.
188 Id. at p.174.
partner of her husband. The supreme good of her was to fulfill her duty towards him, as he was her lord.\textsuperscript{189} It is by this service to the husband that she reaches heaven.\textsuperscript{190}

That woman is considered devoted to the husband, who though harshly spoken to and looked at with a cruel eye has a delighted face towards her husband.\textsuperscript{191}

In the Epic, a daughter-in-law must fear the father-in-law and dignity must be observed between them. The daughter-in-law must not give orders in the presence of her mother-in-law or her father-in-law.\textsuperscript{192}

Woman as the mother occupies a place of great honour and prestige. She is placed higher than the preceptor and father and higher even than the whole earth. She is mentioned first among the three ‘Atigurus’ and this rule holds good from the time of the Upanishads.\textsuperscript{193}

There are some references in the Mahabharata which shows how the widows were treated during that period.

"In religious precepts, women serve no purpose when there husband is dead. She who lives without her husband lives a miserable life."

"..... death is preferable to one who lost her husband."

\textit{Adi Parva 121.21-22}\textsuperscript{194}

There is also a comment which says that just as birds grab the pieces of meat thrown on the ground similarly people want to possess a woman without a husband. In Mahabharata women were held to be fragile and vulnerable to male assaults and thus constantly in need of male protection either by their father, husbands, sons or disciples of their husbands.\textsuperscript{195}

The custom of sati was not widely prevalent in the epic age, but some cases are mentioned in the Mahabharata when widows became sati.\textsuperscript{196}

\begin{footnotes}
\begin{enumerate}
\item Supra note 150, at p. 105
\item Id., at p. 112.
\item Supra note 6, at p. 26.
\item Supra note 150, at p.133.
\item Supra note 171, at p. 172.
\item Desai, Tripta,‘Women in India’. 1992, pp. 43-44.
\item Supra note 24, at p.157.
\end{enumerate}
\end{footnotes}
During the Mahabharata time, widow marriage and divorce were becoming unpopular among the Indo-Aryans, but the need for sons remained paramount. Hence, Niyoga began to be widely practised as a legitimate method of procuring sons for dead men and for those who were rendered incapable of begetting sons.\(^{197}\)

In Mahabharata woman are not only pictured as beautiful, mild, tender and long suffering but there are also women of energy strong will and daring pride.\(^{198}\) Draupati was the one of the feminine character in the Mahabharata typical of the age, confident of her own strength of mind and will. She was the most forceful and consistent personality of the epic.\(^{199}\) Gandhari was another principal female character, who was one of the noblest examples of an ideal mother and woman. She was in reality the incarnation of understanding, judgement, intellect and good sense.\(^{200}\) Another great character in the great epic was of the Kunti, who was both success as well as embodiment of steadfastness and resolution for her sons.\(^{201}\) There are many other interesting characters in the Mahabharata which highlighted the aspect of womenhood in that period e.g. Sakuntala, Siba, Vidula and Gautami.\(^{202}\)

There are few contrasting verses with regard to the status of women in the Mahabharata in which women is condemned:

\[ \text{"Woman generally speak false hood."} \]
\[ \text{Adi Parva 74.72} \]

\[ \text{"Where a woman, or a child.... is the guide}
\]
\[ \text{There persons are as helpless as a stone in a river, which sinks."} \]
\[ \text{Udyoga Parva 38.43}^{203} \]

\[ \text{"Milk is possible in cows, devotion is possible in the Brahmanas, unsteadiness is possible among women.} \]
\[ \text{Udyoga Parva 36.57}^{204} \]

\(^{197}\) Id., at p. 125.
\(^{198}\) Supra note 6, at p. 26.
\(^{199}\) Supra note 24, at p.131.
\(^{200}\) Supra note 150, at p.261.
\(^{201}\) Id., at p.259.
\(^{202}\) Supra note 171, at p.109.
But on the whole all action are said to be futile where women are not honoured considering the fact that pleasure, love and dharma depend upon women, a man even if extremely angry, should not do anything unpleasant to them. Proper treatment of women is indispensable for the prosperity and happiness of the home. There are some verses in the epic showing respect for women:

“Women are deities of prosperity. The person that desires affluence and prosperity should honour them.”

“By cherishing women, one cherishes the Goddess of prosperity herself and by afflicting her, one is said to pain the Goddess of prosperity”.

Anushanika Parva 46.15

“Women should always be adored and treated with love”.

Anushanika Parva 46.5

“Those who are harsh towards the ..... women ..... fall ...... like ripe fruits from their stalks”.

Udyoga Parva 36.60)

The place of honour and respect was accorded to women in the Mahabharata. They were considered pivots not only of domestic life but of the entire society. They have been described as deities of prosperity to be cherished. The heroines of the Epic were capable of high, moral and intellectual attainments, of wonderful altruistic deeds for which they are still held as ideals. They are resolute and spiritual. They are not isolated but are in close contact with the events of their time. They are capable and serviceable members of society. As a matter of fact the epic seems to have produced outstanding portraits of women which have helped to stir Hindu women with hope and faith.

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205 Id., at p. 55.
206 Supra note 190, at p. 257.
207 Supra note 171, pp. 114-115.
208 Supra note 203, at p.55.
209 Supra note 150, at p.288.
210 Supra note 6, at p. 28.
2.5 Women in Buddhism

Buddhism rose as a revolt against the rigid rules of Brahmanism, in which elaborate rituals and scarifies had been established and the caste system became the most important feature of Indian society. The ramifications of ritual reached every detail of a man’s life which gave indomitable power to the Brahmins. Buddhism opened the doors of religion to all human being irrespective of their caste, sex, and other distinction. Buddhism is in its essence a religion of self culture and self restraint. If a woman could achieve these two qualities she was entitled to achieve Nirvana like man. Thus, after a long period, since the dissolution of the Vedic society, the doors of religious education and religion were once again opened to women and her right to salvation was proclaimed.

Though women, as in all religions, were considered inferior to men, but in Buddhism the position of Buddhist women was higher than that of her Hindu sisters. Buddhism recognized the individuality and independence of women whether married or unmarried.

During the Buddhist epoch there was a change in the position and status of the women. Women came to enjoy more equality, and great respect and authority in the male dominant society than ever hitherto accorded to them. Although their activities were confined within certain spheres, principally the domestic, social and religious but there position in general began to improve. The birth of girl child was no longer met with opened eyed and loud voiced despair. People used to pray for a son or daughter. Not only that, in Buddhist literature there are instances of adoption of daughter. There is a passage in which Buddha told about the importance of daughter:

"A female child... may prove to be a better offspring than a male."

Samyutta Nikaya (iii)2.6

Marriage was not the only aim in life of the girls. They were not regarded as shameful if they did not marry. They were neither compelled to an early child marriage nor bound to accept the husband of their parent’s selection specifically in

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209 Id., at p.30.
210 Supra note 24, at p. 84.
212 Gupta, Nimesh Das, ‘Women in Buddhist Tradition’, 2009 at p 11
case of royal family women and the ladies of high degree. The Buddha's view on marriage was regarded as personal and individual concern. Buddhism allows each individual the freedom to decide for himself all the issue pertaining to marriage.

During the Buddhist epoch the general practice of marriage was monogamous, as it had been in the Vedic age. At the same time there was no hard and fast rule and no condemnation of polygamy.

In Buddhism woman was not a household servant, but she had considerable authority in the home as her husband's helpmate, companion and guardian. In temporal and spiritual matters she was regarded as his equal and worthy of respect. But on the contrary the most that was expected of the wife was loyalty, obedience, efficiency in housekeeping, and fidelity like a servant. All this shows subordinate position of the wife in Buddhism.

In Buddhism mother is esteemed as much greater than the father. Children who neglect their parents are condemned. In matters like divorce, inheritance of property, personal political or religious beliefs, etc wives were allowed considerable liberty.

In Buddhism infanticide, abortion, and suicide were not justifiable. According to the Buddhism, there is no ground to say that we have the right to take away the life of another.

In Buddhism widows were accorded good position in comparison to the Hindu widows. As a widow she went on her way unabused, free from any suspicion of ill-omen, not excluded from the domestic festivities, probably capable of inheriting property and certainly of managing it. No widow was expected to remain single in memory of her dead husband; she could either marry or join the nunnery. Sati was practically unknown at the time of the Buddha and never flourished among the Buddhists.

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Supra note 212, at p.3.
Supra note 213, at p.150-151.
Supra note 212, at p.35.
Id., at p.3.
Supra note 24, at p.93.
Supra note 212, at p.10.
Supra note 213, pp.152-153.
Supra note 212, at p.24.
Supra note 24, at p.83.
Buddha’s teaching was primarily concerned with individual spiritual emancipation irrespective of their sex. Initially Buddha was willing to impart sacred teaching to women only when they could receive it along with their Husband. He was strictly against the notion that woman should retire from household duties and resort to the state of homelessness. Because he believed that women were full of inconsistencies and with them there was no difference between truth and untruth. Due to this prejudice the Buddha was at first disinclined to admit women to the Buddhist order. But later he permitted them to enter in the state of houselessness. Thus he established the order for Bhikkunis only after five years after his enlightenment. Though Buddha accepted women in the Buddhist philosophy and made them eligible for salvation but he placed women nuns under strict control. They could not go out unless in groups of two or three. A joint meeting of the monks and nuns sanctioned the admission of a novice nun. New monks, however, could be admitted without consulting nuns at all. A nun could never preach before a congregation of monks, though a few selected among the monks could preach to the nuns. The rule most revealing of woman’s subordination was the injunction that a nun, even a hundred year old must stand in reverence to a monk initiated only yesterday.

Buddha made the rules about the bhikkunis subordinance to the bhikkus because he himself must have been aware of the problems society would have in accepting an independent orders of nuns. These rules call for gestures of submission on the part of nuns, but in no way diminish their ability to meditate and follow the path towards enlightenment.

In spite of discriminatory rules, Buddhism admitted women from all walks of life, from palaces, brothels and the huts of outcastes and raised the status of them.

2.6 Women in Mugal Period

During the pre-Muslim period, all aspects of life of an individual were regulated by the teaching of the Vedas, Smiriti, Puranas and Dharmasutras. In that period the position of women was not altogether disappointing. The rights of freedom

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223 Supra note 213. at p. 141.
224 Supra note 195. at p. 28.
225 Supra note 213. at p.69.
226 Supra note 195. at p.28.
and honour enjoyed by women in that period gradually dwindled in social sphere with
the establishment of Muslim rule in the Indian region. 227

Muslim rulers came here with their own heritage and beliefs, in fact their
judgement in regard to religious beliefs, political policies, social customs, and the way
of life; all were influenced by a concern to act as strictly as possible in accordance
with the teaching of Islam. 228

As regards the position of women in the Islam, there are several verses of the
‘Quran’ emphasize alike the dignity of man and woman in the society and that both
are equal in the eye of God, and equally rewarded for their good deeds. 229 The
attitude of Quran witness to the fact that woman is, at least, as vital to life and society
as man himself and that she is not inferior to him. 230

Whatever may be the teaching of Islam, the need for woman’s modesty was
seriously taken into account in every situation of public life. With the change in the
Islamic polity since eight century A.D, the woman began to lose her rights and
privileges on account of male dominance in the society. 231 The Muslim dominance of
India led to the general increase in the miseries of the women. Due to insecurity and
uncertainty with regard to women’s chastity and honour, more rigorous restrictions
were imposed upon them. There social, domestic and religious activities were
restricted in an outlined sphere of the society. Muslim rulers used to inflict
unbearable sufferings and sorrows in the alien territory in which women suffered
more because they were carried on as pleasure commodities. Consequently this lead
to female slavery in India during the Mugal period. 232 The harem of sultan was filled
with slave girls and there was nothing to prevent any high officer from following the
Sultan’s example. On the other hand, apart from women seized in war and slave girls
imported from other countries, it became a profession to buy and train girls for
dancing and singing. 233

227 Supra note 1, at p.5.
231 Supra note 229, at p.90.
232 Supra note 229, at p. 90.

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During the Mugal period women had suffered many restrictions. Society observed security threats with invading soldiers roaming countryside. Consequently women were placed behind the veil as a protective measure to save their honour at the hands of the invaders. Initially, parda was mainly observed by the Muslim ladies and was not so rigid with the Hindu ladies. But it appears that tendency to imitate the ruling class also gave impetus to the parda system. It was mainly confined to the rich and well to do classes. Poor women especially in village worked in fields could not afford to observe parda.\textsuperscript{234}

This practice was so strict in the Muslim society that any women found in a public place without veiling her face was taken as a ‘shameless’ woman and molestation of her was considered no serious offence as such a woman was reckoned outside the circle of decent society. As a result, even non Muslim women, under Muslim rule took care to veil their faces when they went out.\textsuperscript{235}

The most gruesome practice of performing ‘sati’ was also prevalent in that period. In this custom widow had to burn herself with the dead body of her husband. The practice of performing sati voluntarily was an ancient custom, but gradually emphasis was laid on becoming sati even against her wishes. Society looked down upon widows who did not perform sati and they had to lead a life of suffering and misery. They were treated with contempt by the members of the family and by the society.\textsuperscript{236}

In the pre-mugal period, the Buddhism had not followed the custom of sati. Social sanction for the self-immolation of widows came in with Muslim invasion especially among the Rajputs who considered it a lesser evil than capture or abduction of their women by the invaders.\textsuperscript{237}

The Muslim themselves, with their secular notions of marriage, were against to the practice of sati and did what they could to abolish or discourage it among the Hindu whom they ruled.\textsuperscript{238} Some of the Mugal Emperors tried to prohibit this gruesome practice. Humayun the Mugal Emperor in the sixteenth century sought to

\textsuperscript{234} Supra note 1. at p. 135.
\textsuperscript{235} Supra note 224. at p. 250.
\textsuperscript{236} Supra note 1. pp. 132-133.
\textsuperscript{237} Supra note 24. at p. 262.
\textsuperscript{238} Ibid.

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prohibit it in the case of widows beyond the child bearing age. Akbar laid down that a woman should not be forced to be a sati.\textsuperscript{239} There were many other mugal emperor who made strict rules to prohibit this practice. In spite of all these efforts sati could not be altogether suppressed under the mugal period due to various reasons. With passage of time this evil practice spread all over the India.\textsuperscript{240}

The popularity of early marriages increased during Mugal period and it became a popular feature of the social life. Girls were generally married before they reached the age of nine or ten years. Among the Hindu sometimes daughters were married even before they had learnt to walk and talk. Among the Muslims daughter were generally married at a very young age.\textsuperscript{241}

The evil practice of dowry was also in vogue during Mugal period. It was an old system and gradually became rigorous. Usually it was the bridegroom’s side which received the dowry. But the reverse cannot be ruled out and in some cases the parents or guardians of the bride also received the dowry. It was particularly followed in cases of aged and moneyed grooms who wanted to marry young girls. There was also a curious custom of giving away younger sister of the bride to the bridegroom as a part of the dowry in few communities.\textsuperscript{242}

The practice of polygamy was also prevalent in the Mugal period particularly in Muslim community. But in no case, however, polyandry was permitted. Though much had been said about the good status enjoyed by women in Muslims society, in practice women have suffered great degradation. The Muslim women in general, remained suppresses within the four corners of the house. She was not allowed entry to the mosque as the presence of a woman in a mosque is not conducive to the worshipping of God. Domestic sphere was the most important field for a Muslim woman according to the Muslim law.\textsuperscript{243}

Muslim women stand on an entirely different footing as far as their rights in marital life were concerned. To them marriage is not a sacrament as in the case of Hindu but it is a civil contract to promote normal family life and legitimacy of

\textsuperscript{239} Supra note 224, at p.16.
\textsuperscript{240} Supra note 1, at p.134.
\textsuperscript{241} Id., at p. 132.
\textsuperscript{242} Id., at p. 131.
\textsuperscript{243} Bhagti, M.I., 'Medieval India'. 1965, p. 86.
children. In the matter of divorce, the position of Muslim woman was pitiable as husband can easily divorce the wife unilaterally. But wife did not have any such right in that period.\textsuperscript{244} In marital ties husband is under no obligation to observe conjugal fidelity, and a wife cannot leave him on that account. Thus women were always losers when ever marital relation became unpleasant.\textsuperscript{245}

In the Mugal period the Hindus did not assimilate the customs like divorce, widow remarriage and women inheritance, which governed the Muslim society. The Hindu society had become so static and rigid that their contact with the Muslims, whose social relation were relatively democratic, did not prompt them to adopt the democratic element for the Muslim society. The Hindu society continued its old pattern of life based on the principles and directions of Vedas, Dharmsutras, Smritis, Purana and Munusmriti.\textsuperscript{246} The position of Hindu women in mugal period underwent many changes as a result of the social changes in the country. The honoured position which the women enjoyed before the advent of Muslim gradually deteriorated during their rule.\textsuperscript{247}

During the Mugal period the downward trend in women’s status continued and the impact of Muslim rule further strengthened the weaker sex concept with practice of pardah, polygamy, sati and harems. When women were drawn down in the social hierarchy then they were assigned only a subordinate, subjugated role in social life.\textsuperscript{248} So under the Muslim rule both Hindu and Muslim women lost all their right and privileges and became the property of their masters.

2.7 Women in the British Period

The eighteenth century, perhaps, was the darkest period as for as the position of women was concerned.\textsuperscript{249} The disruption of the Mugal Empire and the consequent political confusion due to advent of various European powers only increased the miseries of Indian Women.\textsuperscript{250} When the British rule established in the middle of 18\textsuperscript{th} century, the position of women was the worst in the history of India. The
deterioration in the position and status of Indian woman had reached to the maximum
degrees due to foul customs, traditions, superstition and irrational bigotry.\textsuperscript{251}
Ideologically woman was considered as a completely inferior species, inferior to
male, having no significance and personality of her own. Socially she was kept in a
state of utter suppression, denied all rights, suppressed and oppressed.\textsuperscript{252} Their very
existence was merely a bare necessity and indispensable appendage to the male
population.\textsuperscript{253}

In this period child marriage was the general rule for all classes of Hindus and
had even spread to some sections of the Muslims. The practice of sati was widely
prevalent and even the Sikhs also practiced it though forbidden by their Gurus.
Pardah was strictly prevalent in the Muslim women and to some extent in Hindu too.
The polygamy was not the general rule but generally practiced by all those who could
afford it.\textsuperscript{254} Widow remarriage was not prevalent hence they had to live in a state of
permanent widowhood.\textsuperscript{255} Prostitution was rampant, and every city and town teemed
with singing and dancing girls. Almost all Hindu temples openly or surreptitiously
harboured Devadasis.\textsuperscript{256}

This was roughly the position of Indian woman when the British take over the
rulership of the country.\textsuperscript{257} But coming of the British in to India did not changed the
pitiable position of Indian woman outrightly. This was mainly due to the fact that the
British were slow as regards social reforms\textsuperscript{258} and followed a cautious policy of non­
intervention in the social and religious affairs of India, as they know very well that it
was practically impossible for them to rule their vast Indian empire without the co­
operation and good will of their subjects.\textsuperscript{259} The task of reforming and uplifting the
status of Indian woman was taken up by the more enlightened persons like Raja Ram
Mohan Roy, Ranade, Sir Sayyad Mohammed Khan and Annee Besant.\textsuperscript{260}

\begin{footnotes}
\footnotetext[251]{Supra note 249, at p. 37.}
\footnotetext[252]{Supra note 6, at p. 37.}
\footnotetext[253]{Supra note 249, at p. 37.}
\footnotetext[254]{Supra note 24, at p. 285.}
\footnotetext[255]{Id., at p. 297.}
\footnotetext[256]{Id., at p. 285.}
\footnotetext[257]{Ibid.}
\footnotetext[259]{Supra note 24, at p. 292.}
\footnotetext[260]{Supra note 258, at p.148.}
\end{footnotes}
One worst aspect of the eighteenth century’s Indian society was the wide prevalence of the gruesome custom of sati.\textsuperscript{261} When the British were confronted with the question of sati, they had the Mugal example before them and they had followed the policy of not banning the practice but at the same time put hurdles.\textsuperscript{262} Not surprising, the most familiar aspect of sati was the British campaign against it, strengthen by social reformers like Raja Ram Mohan Roy, and ultimately resulted in promulgation of Regulation XVII of 1829 “declaring the practice of sati, or of burning or burying alive the widows as illegal and punishable by the criminal courts”.\textsuperscript{263} After the prohibition of sati in 1829, no doubt, its practice did not fall into disuse entirely, although cases of sati sharply reduced numbers.\textsuperscript{264}

Natural consequence of the abolition of sati was the recognition of the right of widows to remarriage, but in this, British were reluctant to take the initiative. The suffering of the living was less spectacular than the agony of the burning widows and the British Government was inclined to treat the question of widow remarriage as they thought it purely a social matter to be decided by society. But due to energetic campaign of social reformers they have passed widow remarriage Act, 1856.\textsuperscript{265}

Although the legislation for the prevention of sati was effective but the Hindu Widow Remarriage Act remained for all practical purposes, a dead letter for a long time, though some organizations like the Brahmo Samaj and Arya Samaj actively supported widow-remarriage, but view against it was so deep rooted that even social reformer evaded the issue when it came to be a question of their sons, brothers or themselves marrying widows.\textsuperscript{266}

Feminine literacy was negligible in that period as it was regarded “as a source of moral danger since only dancing girls could normally read and write.”\textsuperscript{267} By the beginning of the 19\textsuperscript{th} century women in India were hardly educated, the East India Company was indifferent to the task of promoting education to Indians as they knew its drawbacks. British government was also apathetic towards the female education in the beginning. But later on they have tried to impart education to the girls. An
official proclamation was issued in 1854 for the encouragement of women’s education. The Christian missionaries also took the lead and established the school to impart education to the girls. The social renaissance of Indian woman started in the second half of the 19th century lead by social reformers, who vigorously supported the cause of women’s education. Socio-political and religious movement such as Brahma Samaj, the Arya Samaj, the Prathna Smaj, the Theosophical Society and Indian National Congress included education of women as important part of their programme. All these efforts began to bear fruit and the old prejudice against female literacy was definitely overcome in India to some extent.

Child marriage was the general rule in the British India. In the 19th century the age of marriage for girls was eight or nine, although it often differed in some castes or provinces. But in 1929 the Prohibition of Child Marriage Act was passed which raised the minimum age for marriage of girls to fourteen years.

In the British period the dowry system had grown into a monstrous curse throughout the country. It spread to all communities which were traditionally non-dowry taking communities. It also leads to female infanticide. This system had lower the status of girls in India and became the root cause of violence against them.

Further in order that she might not rise in revolt against these customs, an institutional framework and an ideology was created keeping her docile and in permanent subjection. Patriarchal joint family system was another institution of the society in which women had to submit before all the inhuman restrictions imposed on them by their “lawful master” in the name of traditionally approved female behavior patterns.

Thus the patriarchal joint family, the customs of polygamy, the purdah, the child marriage, self immolation of widows or a state of permanent widowhood, all these contributed to the smothering of the development of women in the British

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268 Supra note 258, at p. 71.
269 Id., at p. 72
270 Ibid.
271 Supra note 24, at p. 34.
272 Supra note 249, at p.20.
273 Supra note 24, at p.344.
274 Supra note 195, at p.8.
275 Supra note 6, at p.38.
276 Supra note 249, at p.39.
period. But due to the pioneering work of some social reformers, changes were brought about in the position and status of Indian women.277

2.8 Women in Post Independence India

After independence of India, the new Constitution of India was framed keeping in view the unequal treatment meted out to the women from time immemorial. In India, the history of suppression of women is very old and long which is responsible for including general and special provision for upliftment and development of the status of woman. Certain provisions are specifically mentioned for the benefit of women.278

The preamble of the Constitution contains various objectives and guarantees to all its citizens, irrespective of sex, “Justice, - social, economic and political; Liberty of thought expression belief, faith and worship; Equality of status and opportunity and Fraternity assuring the dignity of individual.” This had been inserted with the view to give equal status to women with men.279 The Constitution of India contemplates a social revolution in the conditions of women through the use of law as an instrument of direct change.280 The Constitution being the supreme law of the land commands respect from all members of the nation whose aspirations and ideal are embodied in it. The sanctity of the supreme law is vital for overall progress of the society. Thus Constitutional provisions enable the women of India to better their conditions.

Keeping in view the objectives of Constitution of India the state enacted various women specific and women related legislation to protect women against social discrimination and atrocities.281 After the independence of India, a number of laws have been enacted and amended, relating to, prohibition of female infanticide, child marriage, dowry related crimes, sati, medical termination of pregnancy, prohibition of prostitution and trafficking in women, atrocities and molestation, abduction, rapes protection in employment, equal remuneration etc.282 All these various laws are accepted and regarded as the basic element to bring about social

277 Supra note 6, at p.37.
278 Supra note 2, at p.5.
280 Supra note 258, at p. 77
282 Supra note 59, at p. 9.
change and emancipation wherever necessary. But notwithstanding the multiplicity of legislation on various fields, with a view to improve the social, political and economic conditions and status of women, the ancient forms of victimization, child marriage, female infanticide, dowry death and various other forms of molestation are still continue. There is no woman who has not suffered at one time or another harassment, humiliation, exploitation and violence. Despite the fact that various laws were enacted to protect women from all types of discriminations and violence; crimes against women are on increase in different ways.

After independence, four different Acts viz., Hindu Marriage Act, 1955, Hindu succession Act, 1956, Hindu Minority and Guardianship Act, 1956, and Hindu Adoption and Maintenance Act, 1956 were enacted, not only with the object of breaking the rigid customs of Hindus but also with a view to give women due place in the marriage, family life and inheritance. But still some glaring feature of discrimination against women remained in these Acts. This was clearly marked in the law dealing with inheritance where in spite of the principle of equality between the sex, Mitakshara coparcenary giving preferential right to sons in the joint family property was retained. In addition to this, inequitable provision of the unrestricted freedom of testation which is used as a device to disinherit women heirs continues to be part of the Hindu law of succession. The patriarchal values which invariably regard father as the head of the family is reflected in the law dealing with guardianship of minor children. The father is the natural guardian with the mother coming only after him.

In spite of the enactment of Dowry Prohibition Act, 1961 and amendments in criminal law nothing has changed in the miserable conditions of Indian women. Almost every day in India many women are burnt alive or beaten to death or pushed

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283 Supra note 24, at p. 77.
284 Supra note 6, at p. 39.
286 Supra note 6 at, p. 39.
289 Ibid.
to commits suicide for dowry.\textsuperscript{290} A new phenomenon has surfaced female foeticide due to misuse of the amniocentesis test which unscrupulous doctors are using as sex determination tests.\textsuperscript{291} If a girl child manages somehow to be born and to survive, the crimes against her begin in her own home and hearth at an early age.\textsuperscript{292}

Obviously the practice of \textit{sati} was outlawed in the nineteenth century and abetment of \textit{sati} has been made punishable under Indian Penal Code,\textsuperscript{293} but still some stray instances could be found where it has been punished. On the contrary there have been some other cases, where commission of sati either ignored or left unpunished.\textsuperscript{294} Incident of \textit{sati} after independence of India reflects that the practice of \textit{sati} embedded in our social culture and devalues the sustained efforts at legislature, administrative and educational levels.\textsuperscript{295}

The question of widow remarriage remained a controversial issue even after the independence of India. Position of women became worst once she loses her husband specifically when she has no issue or economic means to live.\textsuperscript{296}

The problem of sexual harassment of women at the workplace is also becoming serious day by day despite the direction of the Supreme Court.\textsuperscript{297} Providing protection against sexual harassment may be possible to some extent in the organized sector, both in private and government offices, but what about women in unorganized sectors and in rural area. For example domestic female workers or maid servants or female labourers tilling the land.\textsuperscript{298}

Today, women of all classes do not venture to move out freely in the absence of male escort in parts of India fearing violence. The violence may be in form of rape, robbery, molestation, eve teasing, indecent remarks or gestures. Therefore, the constitutionally guaranteed right of freedom of movement has little meaning for the vast majority of women. The restraints imposed by culture and traditions render the

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\textsuperscript{291} Supra note 288. at p. 6.
\textsuperscript{292} Majumdar, Maya. 'Protecting Our Women', Vol. 1. 2001. p. 135.
\textsuperscript{293} Sec. 306 of India Penal Code
\textsuperscript{294} Supra note 290. at p. 10.
\textsuperscript{295} Id. at p.11.
\textsuperscript{296} Id. at p. 12.
\textsuperscript{297} Supra note 285. at p. 22.
\textsuperscript{298} Ibid.
\end{flushright}
right of freedom of speech also illusory. Not only this women are not safe even in their own homes. The worst forms of verbal, physical, psychological and sexual violence are committed against woman of all religious, racial or age group either in parental or matrimonial home by their near or dears. Thus for women there is no meaning of various Constitutional provisions, criminal law, civil law and women’s specific laws until they become reality for them and provide a violence free family and society.

Thus, it can be said that violence against, women is not a myth, but a reality, which they are facing since Vedic time to till date. The type, frequency, intensity and control of violence against women may vary from time to time or place to place, but it has been present everywhere. It exists everywhere irrespective of caste, religion, race, as a powerful tool of oppression and is used to dominate the women. There is no doubt that woman are not safe outside the home but what about the worst forms of violence that happen behind the closed doors and cover the entire gamut of exploitation, discrimination, maintained unequal economic and social structures and create an atmosphere of terror and threat, to the women. Alarming increase of violence against the women raises the question whether women are human beings or not? If they are human beings then why they from womb to tomb face violence in their own homes?

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299 Supra note 288, p. at 7.
300 Supra note 290, at p. 14.
302 Id, at p. 152.