INTRODUCTION

The development of a nation solely depends on the social status of women. In fact the status of women in different societies of the nation entirely varies from one place to another place. Almost all human societies in different parts of the world are male dominated. Male take active part and the female only passive part of the different societies and have no material and worthwhile rights. In theory, they are respectable but in practice they are the subjects of cruelty, ill-treatment and all kinds of discrimination.¹

The term ‘discrimination’ against women means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil, or any other field.\textsuperscript{2} In the Aryan society women are respected as mothers, sisters and daughters. Manu said, “Where women are respected, divine graces adore that home”.\textsuperscript{3} He further said that “a mother surpasses a thousand fathers” and “the daughter is equal to the son”.\textsuperscript{4}

The attitude of Indian society ever since Vedic times till the dawn of the second millennium has been contradictory with regard to gender equality. In India, a woman is described as divine and worshipped as the embodiment of all the virtues on the one hand and on the other hand, she is discriminated and victimized by the norms created by the male dominated society.\textsuperscript{5} Moreover, the people who advocate women liberation felt that she has not been given her due

\begin{itemize}
\item \textsuperscript{2}K. Umarani, \textit{Property Rights of Women}, (Delhi:2006), p.4.
\item \textsuperscript{4}Edward W. Hopkins, \textit{Hindu Polity (The Ordinances of Manu)}, (Ludhiana:1972), p.268.
\item \textsuperscript{5}R. Seyon, ‘Legislative and Judicial Initiatives Towards Women Empowerment’, \textit{AIR}, (Madras:2007), April, p.60.
\end{itemize}
and legitimate place and status in the society, even after many cultural revolutions. A woman is often misled to believe that she is being held in high esteem; but she is always restricted in the form of social and religious practices and rituals.\(^6\)

During the later Vedic period, women lost much of their prestige and power. They were deprived of the right to property, right to upanayana ceremony and the right to join in political activities.\(^7\) Polygamy was too common. There is a general opinion that her self-respect and dignity is often outraged often in the name of religion and morality. Religion, undoubtedly accords an inferior and dependent status to the Hindu women. For example, if the girl is married, she has to observe more traditions than the man.

The man wears no distinctive marks signifying the married state and does not incur any in auspiciousness at the death of his wife. But the widow has to follow the strict code of conduct. She is debarred from active participation in auspicious occasions and the loss of the right to full participation in socio-religious life.


Ever since the birth of civilized society, man was considered as the provider and protector while woman was considered as his dependent. The pages of the social history of India reveal that there was a feeling that women were inferior to men physically, intellectually and emotionally. Further man always feared that giving freedom to women can spell disaster for him and society. This does not mean that women are not given due recognition. They have been discriminated and not allowed to enjoy any rights. But whatever role the women had to play either in the family or society is determined and decided by man.\(^8\)

As a result, woman is mostly confined to domestic chores while man rules over her. To corroborate this view, men of the past pointed out the biological features of women. In their opinion, the fair sex is considered to be weak. Religious literature termed her as weaker vessel. By setting aside her contributions, she is considered as a class or group of society, which is in a disadvantaged position. The reason is that Hindu society is tied up with religious dogmas and practices. In the course of centuries, the position of women became subordinate to that of men, legally, economically, socially and in family life except in some fairly minor domestic matters. Moreover women were not independent but dependent in all matters on men from the time of childhood, after marriage and in old age, they

---

are to be protected by the father, the husband and son respectively. But in advanced countries, women were free from such clutches and independent economically, socially as well as in family life. Woman had been the victim of untold miseries, hardships and atrocities caused and perpetuated by the male dominated Indian society. The vulnerability of women as a class has nothing to do with their economic independence.

The Indian society consists of many communities professing diverse religious faiths and to them religion is of paramount importance. So it provides moral base for the status of women in the society. Each religion has a treasure of myths and legends through which descriptions of events and activities emphasize certain values. Religion has a dynamic character. It is shaped and reshaped by historical processes and the interaction with popular religion. In Hinduism, woman is portrayed with a multitude of derogatory attributes. She must not study the Vedas or perform any sacrifice. Knowledge of the sastras is forbidden to her.

In India, women have always been suffering and are suffering discrimination in silence since birth. Self-sacrifice and self-denial are proclaimed

---

9Edward W. Hopkins, *op.cit.*, p.130.
to be their nobility and fortitude and yet they have been subjected to all inequities, indignities and inequality. Man and woman, though complementary to each other, have never been equal. Women from time immemorial were placed in an inferior status in the Hindu social order. Woman had no place in the Hindu scheme of inheritance. This is clear from the text of Baudhayana which says that a woman is not entitled to heritage, for a text of the revelation says: ‘Women are considered to be destitute of strength and of a portion’. The woman has always been treated as an inferior human being. Her rights, freedom and liberty have been curtailed by man and society in general in different ways. This has been especially so in a country like India where the winds of liberation are yet to wash away the traditional dogmas and prejudices haunting women. Gain of independence for the country has not been synonymous with gain of independence for the average Indian woman.

In the modern times, the trend relating to the status of women is changing in every society and particularly in India; much has been done to give equal status to women with men. Swami Vivekananda said: ‘Just as a bird could not fly with

---

one wing only, a nation would not march forward if the women are left behind’.  

The Constitution of India has discarded all sex discriminations and declared equality of status and opportunity.  

Equality and liberty have been made a fundamental right and the states are directed to remove all the sex inequalities and impediments in this regard. There is no doubt that the Constitution contemplates the attainment of an entirely new social order by making deliberate departure from the norms and institutions of undemocratic governance of the inherited social, political and economic systems. In doing so, the Constitution gives priority to law as an instrument for transforming the status of women in particular and society in general. But legislation cannot by itself change the society. To translate these rights into reality is the task of other agencies. The common people have to be moulded in order to accept these rights. The executive and judiciary also have a major role to play in this regard. Sometimes the judiciary has interpreted new legislation but the executive branch has seldom taken effort to set up machinery to educate the people about the socio-economic changes.

---


The mass media used for publicizing certain measures taken by the government has been conspicuously silent about social legislation. If legislation reflects the social values of a country, emancipation of women is the natural measure of the general emancipation of the given society. It is therefore necessary not only to pass legislation, but also to see that it is implemented. The success of the implementation of the legislation can be seen from the fact that through demands for changes in the laws to improve the position of women are also gaining momentum.

**Importance of the Study**

Women as human beings and the individuals in their own right have the same claim to basic human rights as the men, including decision making as regards to their own lives. In this regard the law makers in India enacted laws for equal treatment of women. So, the law plays an important role in shaping the society particularly for women folk. It has been considered as an essential condition for their emancipation. Many legislative attempts were taken during the British rule and even after independence.
In the meantime, development of women in other societies reflected in the Indian social scenario. So, after the attainment of independence, there are some factors that promoted the legislature to make various laws to give women their due share. The Constitution of India prohibits any discrimination based on the grounds of sex in general and in the matter of property rights and public employment in particular. This prohibition of gender based discrimination has been given the status of a fundamental right.

Various other laws have been enacted to deal with personal matters like marriage, divorce, succession and so on. There are different laws governing different communities and religions which confer property rights on women. A woman is free to acquire her own property in her own name. However, rights of women in terms of succession and inheritance to the property either from their parents or from their husbands have practical problems.

**Scope and Purpose**

The proposed research is an attempt to analyze the gender equality and succession right of the Hindu women with special reference to Tamil Nadu. The Hindu Succession Act provides an ample opportunity for profound changes in
the position of the women. The most important one was to introduce equal
inghts of succession between male and female heirs, in the same category like
brother and sister, son and daughter. The act recognized the right of women to
inherit equally with men and the abolition of the life estate of female heirs.
Moreover the women have the right to use sell, mortgage or dispose of the
inherited property in the way they like. So, the study has the social relevance to
highlight the sense of equality and it tries to focus the practical barriers in this
realm.

The purpose of the study intends to analyze the practical problems of
Indian woman with regard to property rights. The legal equality of women is
accepted in every modern society and it is further strengthened by laws. In spite
of this, multiple negative factors try to corner women and they face both vertical
and horizontal gender oppressions. Further the basic prejudice against women is
the feeling that woman is inferior to man; she is good for domestic chores and
breeding children and she has no capacity to handle strenuous work in offices and
other fields. These types of opinions are responsible for women being down
graded in social hierarchy. Some times, lack of motivation to achieve among
women has been responsible for their degradation. At times women have been
responsible for perpetuating the age old dogmas and rituals which hinder their progress.

One of the main reasons for misery and sufferings of the Indian women has been the lack of awareness of their legal rights, because they were not allowed to know their rights. Moreover, they were dependent on the men also. So, to know their rights, publicity of new legislation and educating women need to go hand in hand. Some of the educated women, even, if they know or are aware of their rights, have been conditioned by the social disorder and many of them oppose sisters sharing the property of the parents with their brothers.

Most of the married Indian women do not have any independent source of income. Many women even give up employment after marriage or do not take up a job for many years in order to look after their children. Therefore, they are economically dependent on their husbands. Though the middle class women are aware of their rights, they are not willing to come forward to claim it due to the fear of noncordial relationship with the male members of their families.

Notwithstanding the promulgation of the Constitution of India which prohibits discrimination on the ground of sex, women in general are ignorant of their legal rights enjoyed by them, some rights equally with man and some rights
exclusively. So gender equality concerns each and every member of the society and forms the very basis of a just society. In order to change the status of women, economic independence is of paramount importance which was realized by legislators’ long back.

**Limitation**

The study analyses the gender equality and the property rights of the Hindu women in Tamil Nadu alone. The proposed research is limited to study the condition of women in Hindu society and their rights to property, to deal with gender equality only through the succession rights of Hindu women in Tamil Nadu from 1956 to 1990 that is from the year of Hindu Succession Act to Tamil Nadu Amendment Act 1989 (Tamil Nadu Act No 1 of 1990). Though it cites examples from people practicing other religions, it does not deal with the other religions and the property rights of the religions concerned. The study has traced the problems of women of the ancient period simply to see the background and it is restricted to the post independent Tamil Nadu. Though many cases have been traced, related to property rights mention is made of a few cases which are highly pertinent to the study.
Objectives of the Study

The objectives of the study are both academic and social. The laws are in favour of women, who are not able to utilize and enjoy them. So the researcher wants to expose the factors for this precarious position of women. The study attempts to understand the position of women in India. The aim is to study the concept and meaning of gender equality. The main focus of the thesis is to explore the historical background of the enactment of Hindu Succession Act and to analyze the laws enacted by pre and post independent Indian administration. The study aims to study the various practical problems in implementing the laws and to bring out the provisions and remarkable changes of the act. It has been attempted through a critical study of the cases to know property rights of women in Tamil Nadu through case laws and interviews. Above all, this work will highlight and assess how far the act brought out gender equality through the property rights by various means and analyze the solutions for these problems through education, propagation of laws and development of anti-dowry attitude by utilizing mass media.

Methodology
The present study is both historical and analytical in nature. It is descriptive yet at the same time interpretative. This study is unbiased and impartial and no time truth is sacrificed and has been validated from different sources. The various techniques of the field study, personal observation method and interviews are adopted. Keeping in mind, the limitations of time and resources available, the scholar has restricted the number of cases and individuals. The use of different techniques enables the study to cross check and verify the veracity and authenticity of the materials collected.

**Chapterization**

The present research includes five chapters besides the introduction and conclusion. The status of women, the relationship between women and religion and the importance of law are given in the introduction. The limitation and scope and purpose of the study are also given in the introduction. The later part of the introduction contains the objectives, the scope for the review of literature, an elaborate account of both primary and secondary sources consulted for writing the thesis.

The first chapter deals with the gender equality - its concept, meaning, characteristics and implications and the forces which generate gender equality.
The second chapter describes the historical background of the enactment of the Hindu Succession Act (i.e.) succession rights of women through the ages from primitive period to the enactment of Hindu Succession Act of 1956 including the act of 1989 in Tamil Nadu. The third chapter analyses the salient features and the changes brought out by the Hindu Succession Act. The fourth chapter furnishes the important cases related to property rights and changes which is brought out by the implementation of Hindu Succession Act 1956 in Tamil Nadu. The fifth chapter discusses the Amendment of the Act and traces the developmental changes of the act since 1956. Attempts made by the law givers to bring out some radical changes in the property rights of Hindu women are also analyzed carefully. This chapter examines the impact of Hindu Succession Act to generate gender equality. The conclusion gives an assessment of the works and the needs to promote gender equality in Tamil Nadu in particular, and India in general. The Glossary contains the meaning of the legal terms used in the thesis and the Bibliography contains a detailed list of source materials used for writing this thesis.

Sources of information
The sources for the present study are both primary and secondary sources. The Hindu Succession Act 1956 is also one of the primary sources for writing this thesis. Mainly sources are collected from Madras High Court, Madurai District Court, People’s Watch, Madurai and various libraries of Tamil Nadu. Many bare acts for the Hindu Succession Act 1956, Tamil Nadu Amendment Act 1989, and Hindu Succession Amendment Act 2005 are also used. To analyze the cases, Hindu Law Digest is utilized for this study. Proceedings and Parliamentary Debates are too helped to know about the Hindu Succession Act. Many reports, records and pleadings furnish information regarding the gender concept. Research articles in Vikasini - The journal of Women’s Empowerment, The Madras Law Journal, Women’s Link, Manushi, Economic and Political Weekly and evidences derived out of interviews are used for writing this dissertation. The personal observation of the investigator also forms an inevitable part of the sources. Codifications such as Manu, Yajnavalkya, Brihaspathi are used for making this study.

As far as the secondary sources are concerned books like Kamala Basin’s Understanding Gender provides information about gender and its theories. Mullah’s Principles of Hindu Law by S.A. Desai and Position and Civilization of Hindu Women by A.S. Altkar give a mines of information about the historical background of the succession rights of women and the necessity which made the
government to enact the Hindu Succession Act have been consulted. *Hindu Women’s Right to Property in India* by Kulwant Gill and *Property Rights of Women* by K. Uma Devi gives a detailed account about the position of women during various ages. *Hindu Law* of N.R. Ragavachariar furnishes information regarding *The Hindu Women’s Property Act 1937* and *Hindu Law* by N.N.Mitra too provides information regarding the provisions of the act. *The Hindu Succession Act 1956* by A.G.Gupte and *Family Law in India* by T.V.Subba Rao and *State, Gender and Rhetoric of Law Reform* by Flavia Agnes provide materials for the Hindu Succession Amendment Act 2004 and 2005, *Hindu Laws* by Pulamai Venkatachalam, Supreme Court Cases, Tamil Nadu Cases gives a lot of information for cases relating to property rights for Hindu women.

**GENDER EQUALITY**

Traditionally, men have had a superior position than women in societies around the world. The values and norms in society have been shaped accordingly. This brings about unequal treatment of women. There is no parallel shift in discriminatory attitudes that exist towards women and institutional practices and social relations that reinforce the lower status of women. Nowadays greater
emphasis is being placed on empowering women so that they can develop and realize their full potential and contribute to the society and nation as well. The importance of gender concern towards successful project and programme implementation, promoting social welfare and economic efficiency as well as in readdressing social, economic and political inequalities is widely acknowledged. Gender equality could not be achieved merely by the number of women in politics and administration.

1.1 Gender Concept

Gender can be defined as the set of characteristics, roles and behaviour that distinguish women from men. The sex of an individual is biologically determined whereas gender characteristics are socially determined. It is a product of nurturing and conditioning the socio-cultural norms and expectations. These characteristics change with time and vary from one culture to another. Gender also refers to the web of cultural symbols. It is a normative concept, institutional structures and internationalized self images which through a process of social constructions define masculine and feminine roles and articulate these roles within power relationship. The word gender is used as a short cut for gender
equality and it is now being used as a synonym for women. Gender does not mean this alone and gender intervention is not for the sake of women alone.\textsuperscript{14}

Gender is a relational term in general and it is about the conflicts, arguments and discussions regarding equality among men and women. If that negotiation space is not created, though less doubt both men and women move upwards. In the development process, the gaps between men and women narrow down, but inevitably in the social front they still continue to remain. Gender is now being used sociologically. In its new incarnation, gender refers to the socio-cultural definition of man and woman; the way societies distinguish men and women and assign them social roles.

According to Annie Oakley, a social reformer, distinction of sex is related to biological differences, whereas gender identity of men and women in a given society is socially and psychologically determined. Biological and physical conditions (chromosomes, external and internal genital, hormonal states and

secondary sex characteristics) lead to the determination of male or female sex. To determine gender however social and cultural perceptions of masculine and feminine traits and roles must be taken into account. Gender is learnt through a process of socialization and through the culture of a particular society concerned. In many societies, boys are encouraged in the acts considered to display male traits (and girls vice versa) through the toys given to children (gun for boys and dolls for girls). The kinds of discipline meted out, the jobs or careers to which they might aspire and the portrayal of men and women in the media make the children learn their gender from birth itself. They learn how they should behave in order to be perceived by others and themselves, either as masculine or feminine. Throughout their life, parents, teachers and peers, teach their culture and behaviours through the above mentioned means.

1.2 Sex and Gender

Every society uses biological sex as one criterion for describing

---

gender but beyond that simple starting point, no two cultures would completely agree on what distinguishes one gender from another. Therefore, there is considerable variation in gender roles among various cultures.

There are differences between sex and gender. Sex is nature and biological. It refers to visible difference generally and related differences in procreative functions. It is constant. It remains the same everywhere. Moreover it cannot be changed. But gender is socio culturally created. It refers to masculine and feminine qualities, behaviour, and patterns, roles and responsibilities etcetera. It is variable; it changes from time to time, culture to culture, even family to family. It can be changed. It is the behaviour that is expected as the norm constructed and set by social condition and not due to biological differences. And it is related to roles, behaviour, attitude and mindset which are socially, psychologically, historically and culturally constructed. It deals with how men relate with women in their cultural context and its impact. Gender is a social construct which has different expectations from men and women. The division of labour is based on these gender roles. Gender roles define who have access to or control over resources. Gender roles change over the period

---


17 Ibid.

18 Ibid.
indicating to a person who can give life to other person. Gender includes social and economical conditions as it describing the condition of life of the people in the society. Gender itself is interactive and men and women, boys and girls could participate equally and jointly in transforming gender relations and gender exclusiveness arrangements in society.

1.3 Theories on Gender

The word ‘women’ has been replaced with the term ‘gender’ as a new category of analysis to assert that much of sexual differentiation is a social and political formation related to, but not determined by biological sex differences. Gender is seen as the process by which individuals who are born into the biological categories of male or female become the social categories of men and women through the actuation of locally defined attributes of masculinity and femininity. Therefore the feminist argue that this replacement (from women to gender) provides deeper analysis of inequalities and thus challenges the structure of current social, economic and cultural process.

The term gender is generally used to indicate the differences between sexes. But more than physical difference, women are exposed to several

---

prejudices and disabilities caused by social, political and economic barriers. Hence the social scientists are now using the term gender in a broader sense to indicate the social, political and economic handicaps which people undergo on the basis of sex discrimination. These handicaps formed the basis of discrimination based on gender-based and they form the subject-matter of several theories explaining gender-based discrimination.20

The word gender seems to have first used by American feminist Simon De Behaviour wanted to reject biological determinism as ‘sex’ or sexual difference. Two major theories of gender are prevalent today, namely, the psychologically focused theory of gender, historically and anthropologically focused explanation of gender.21

The first theory is represented by Simon De Behaviour. According to her, ‘one is not born but rather becomes a woman’. It is a whole process by which femininity is manufactured in society. “No biological, psychological or economic fate determines the figure that the human female presents in society, it is


21Ibid.
civilization as a whole that produces this creation, intermediate between male and eunuch who is described as female”.\textsuperscript{22}

The second theory of gender based on historical and anthropological explanation proclaims that in most of the societies, so far, gender has been a socially constructed category rather than biologically determined. Michelle A. Rosaldo, an anthropologist supports this theory on the basis of her cross cultural research which reveals that women are subjected to authority due to the existing dichotomy between the public and private. Linda J. Nicholson, a historian also rejects the inequality of sexes. She stresses the need to fight against the powerful tendency of the present theory to rectify the public–private distinction and to perceive it as rigid.

Gender is socially constructed and culturally determined differences in the relations between men and women and their roles and responsibilities in the household community or society. Gender differences which usually reflect social and cultural discrimination and inequality are not to be confused with sex-based differences which refer to biological- anatomical and physiological differences between men and women.\textsuperscript{23}

\textsuperscript{22}Kanta Sharma, \textit{op.cit.}, p.4.

1.4 Gender Equality

The gender equality doctrine is an outstanding contribution of the 20\textsuperscript{th} century. The social thought has been used as a practical objective for the welfare of the human society. The psychologists and sociologists repute the concept by placing people in slots labeled ‘male’ and ‘female’ and shaping them to fit the slots. Instead they insist on the idea that each child should be treated as a total person without regard for the traditional notions of what a boy or girl should be.\textsuperscript{24}

Gender equality should be seen in relative terms because it is impractical to see it in absolute terms. There are two approaches for achieving gender equality viz., mainstreaming gender and promoting women’s empowerment. Gender mainstreaming means being deliberate in giving visibility and support to women’s contributions, and maintaining the assumption that women would benefit equally from gender–neutral development. It is argued that the key issue is not food or resources but the denial of access and opportunities to women.\textsuperscript{25}

\begin{flushright}
\begin{footnotesize}
\begin{enumerate}
\item Anita Banerjee and Raj Kumar Sen, \textit{op. cit.}, p.46.
\end{enumerate}
\end{footnotesize}
\end{flushright}
Gender equality can be seen as equality of participation in access to utilization of opportunities outside the four walls.

Gender equality is an important issue of human rights and social justice. Women represent half of the resources and half of the potential in all societies. Efforts to promote greater equality between women and men can also contribute to the overall development of human society. The empowerment, autonomy and the improvement of women’s social, economic and political status are essential for the achievement of sustainable development in all areas of life. Gender equality is critical for sustainable people centered development. The benefits of reducing gender based constraints will directly reflect on the economic development and efficiency of the nation. For the overall development of the country it is very much essential to have educated, healthy, enlightened and empowered women.

Gender equality means giving men and women, boys and girls the same opportunities to participate in the development of their societies and to achieve self-fulfillment. In order to achieve such equal partnership between men and women, male dominance and control have to be removed. To change the

---

globalized culture of male dominance is real and an urgent challenge. It is necessary to involve men in such a task and make them responsible to effect such a change in joining hands with women. As Gandhi said, “parents should vow to themselves to treat their daughters and sons on footing of perfect equality”.  

Mutual respects, dialogue and the sharing of public and family responsibilities will foster an equal partnership between both the sexes, and such a partnership has to be promoted by the media and by other innovative means. One should be aware that building a gender-just and humane society is not brought about by substituting female dominance in place of male dominance but through partnership of men and women. Gender equality can be seen as equality of participation in, access to and utilization of opportunities out side as well as within the four walls. Equality is a basic ingredient of democracy. The concept of equality implies both equality as justice and equality as sameness. The former promotes authentic diversity, professes equal opportunity to all and prescribes privileged differentiation. The later stands for uniformity, treats all men alike and worthy of equal respect as human beings. In the words of Gandhi, there are great inequalities in the physical world. People have to realize equality in the midst of

this apparent external inequality.”²⁸ Equality is not only the equitable distribution of the resources. But also the recognition of one’s power in the society and their utilization is important. Equality cannot be achieved unless their power is utilized and their authority is recognized.²⁹ Equality does not mean uniformity and perfect equality. For a healthy society and peaceful home, mutual cooperation, and harmony are essential. According to Gandhi, both male and female are not expected to do the same type of jobs. To exhort women to come out with guns to protect homes is a sign of downfall for both men and women. Protection of the home from external danger is as important as keeping the house in order and the first task lies with men and the second one with women. So the parity between two sexes does mean excellence in respective fields and getting ample opportunity to develop one’s full personality is the hallmark of equality.³⁰

Equality can be defined as a state or contribution of being the same, especially in terms of social status or legal and political rights. Historically in Western societies, men have had a higher social status and more extensive legal


and political rights than women. The 19\textsuperscript{th} and 20\textsuperscript{th} century in Britain, feminists campaigned to extend equal rights to women, the key rights and privileges (in relation to education, property, employment and the right to vote) previously enjoyed by men. Later in 20\textsuperscript{th} century, a range of legislation was introduced with the aim (including the sex discrimination act and equal pay act) to facilitate equality between the men and women through the prohibition of discriminatory practices.

The issue of whether equality requires all women to be treated the same as all men, irrespective of their differences; the equality difference debate can be seen through three perspectives. The equality perspective is the concern, to extend to women the same rights and privileges that men have, through identifying areas of unequal treatment and eliminating them via legal reforms. The equality is to be achieved through gender neutrality or androgyny. However, this can mean that the goal of equality is achieved through the assimilation of subordinated groups (women, gay men) to the values, institutions and life styles of dominant groups (men, heterosexuals).\footnote{Jane Pikher & Imelda Wheelman, op.cit., pp.37-38.} The gender equality proposes that women and men have equal conditions for relying on their full human rights and for contributing to and benefiting from social, cultural and political development.
Therefore, gender equality is the equal valuing by society of the similarities and the differences of men, women and the roles they play. It is based on men, women being full partners in their home, their community and their society.\textsuperscript{32}

Gender equality denotes the equivalence in life outcomes from women and men, recognizing their different needs, interests, and requirements and distribution of power and resources. The goal of gender equality sometimes called substantive equality moves beyond equality of opportunity by requiring transformative changes. It recognizes that women and men have different needs, preferences and interests and thus the equality necessitates different treatment of men and women.

Equality is not a technocratic goal. It is a wholesale commitment. Achieving it requires a long term process in which all cultural, social, political and economical norms undergo fundamental change.\textsuperscript{33} It also requires an entirely new way of thinking in which the stereotyping of women and men no longer limits their choices. But it gives way to a new philosophy that regards all people as essential agents to change and to development. Gender equality denotes women


having the same opportunities in life as men including the ability to participate in
the public sphere.

The view of liberal feminists is that removing the discrimination in
opportunities for women and allowing them to achieve equal status on par with
men. The progress in women’s status is measured against the male norm. Equal
measures such as women’s participation in public life. Gender denotes equivalence in life
for women and men, recognizing their different needs and interests requiring a
redistribution of power and resources.

Traditionally men have had a strong position than women in societies
around the world. The values and norms in society have been shaped
accordingly. This makes an equal treatment of women and men as a strategy for
gender equality. There is no parallel shift in discriminatory attitudes that exist
towards women and institutional practices and social relations that reinforce the
lower status of women. But, the principle of gender equality has been basic to
Indian thinking for over a century. The 19th and 20th century, a succession of
women’s movements witnessed burning social issues like women’s education and
widow remarriage. In 1931, the Indian National Congress passed a resolution for
the fundamental rights to adopt gender equality as a guiding principle.\textsuperscript{34} In the

\textsuperscript{34}Report on “Capacity Building Training on Gender and Development”, (Chennai:
words of Gandhi, “subjugation and exploitation of women’s interest in teaching and women’s acceptance of them is a crime or undemocratic”.

Since independence, the Indian planning has been given equal status and recognition to women. Moreover, it is related with the progress of the nation. Gender equity or equality could not be achieved simply by increasing the number of women in politics and administration. On many occasions, they lacked access to leadership and decision making. And in high positions, they lacked gender sensitivity too. The focus should be shifted to a more quality oriented view of women’s participation and the strategy of gender mainstreaming.

The solutions to gender discrimination lie mainly in the provision of inputs for women to realize their productive potentials. If greater resources are channeled to women, the situation of social and economic inequality may get a tremendous change. In general, unintentional changes in gender system are technological change and economic expansion. They trigger off the growth of industrialization and urbanization which contribute the growth and development of women’s movement. In the industrialization, man made things were changed into machine made things. It is a specific form of technological change.

---

Moreover, it is accompanied by economic expansion. To participate in the industrial growth and to get economic development, women’s movements should be therefore viewed as primary force especially to increase gender equality.\textsuperscript{36}

The concept of gender equality may be summed up as that the equality implies both equality as justice and equality as sameness. The former promotes authentic diversity, progresses and equal opportunity to all and prescribes differentiation. The later stands for uniformity, treats all men and women alike and worthy of equal respect as human beings.

1.5 Importance to bring Gender Equality

Gender equality requires each man and woman to look into themselves and overcome their male (being aggressive, dominating, competitive and self-centered) and female (being submissive, fearful, diffident) unwanted attitudes. This can be healed only through the large scale practice of carrying and nurturing

awareness in the domestic and public spheres. For this, equality of men and women in all walks of life is the basic requirement.

Upholding the quality of rights is not an act of benevolence by those in power. It is needed for the progress of every society, in which women have equal numerical strength. Such equality has been enshrined in global and national commitments from the Universal Declaration of Human Rights (1945) UN Declaration of Women’s Rights (1967) postulated the egalitarian doctrine of achieving equal rights for women as that of men and advocated its universal recognition in law by all countries as an unavoidable necessity. In order to draw attention to the obstacles and catalyze a swifter change in women’s status, the United Nations declared 1975-85 as International Women’s decade. The decade for women had far-reaching concrete results. One was the creation of two UN bodies devoted exclusively to women: UNIFEM (The United Nations Development Fund for Women) and INSTRAW (International Research and Training Institute for the Advancement of Women) which supports the fuller participation of women in the economic social and political spheres.\(^{37}\)

The International Women’s Decade (1975-1985) and the submission of the report of the committee on the status of women—“Towards Equality” in 1974

---

brought out glaring inequalities in society and increasing exploitation and marginalization of women in the national scenario.\textsuperscript{38} This led to the establishment of several voluntary organizations to work for the cause of women. Various women’s groups, sensitive lawyers had launched a struggle to fight against injustice. They were taking great pains to see that the legislations were implemented and new legislations were enacted as and when the need demanded. Many new policies and programmes to improve the status of women had been introduced and implemented. Maximum participation of women as well as men in all fields of human activity is essential for the full and complete development of a country, the welfare of the world and the cause of world peace. Any discrimination is against equal rights of women or their subordination amounts to injustice to half of humanity. Prevention of the participation of women on an equal basis with men in political, social, economic and cultural life of their country is a great obstacle to the development of the potential of women in the service of their country and of humanity. The UN General Assembly reaffirmed its faith in the fundamental rights and in the equal rights of men and women.

women. Gender equality can be understood in two ways. Formal equality means treating everyone identically regardless of circumstances.

It is promised on the theory that all people are equal and that treating all people in the same way is therefore fair. Substantive equality on the other hand is concerned with arriving at equality of outcomes rather than with giving identical treatment. This is the essence of gender equality. The Constitution of India provides for equality of status and opportunity to all citizens in the country, gender equality is necessary not only because of the constitutional provisions, but to unleash the energy and productive capabilities of women.

Besides the realization that development of women is necessary for the overall development of nations, the following factors have also been propelling countries towards alliancing gender equality. There are many ways to bring out the gender equality. They are: a) Increasing awareness among people particularly in advanced countries, the gender roles are social constructs and that

\[39\]

women are capable of doing all type of jobs.  
b) Influence of feminist writings and efforts made by women’s organizations to bring into light several discrimination practices against women.  
c) Improvement in educational level of women which made them aware of their relative status vise a visa  
d) Women are joining all types of jobs and performing equally well and sometimes better than male counter parts.  
e) A massive educational programmer is needed including teaching social equality between men and women.  
f) An educational priorities must reflect the needs of the changing world, which includes gender sensitization.

1.6 Factors influencing Gender Equality

The reality however is that women do not share equality with men in the opportunities, benefits and responsibilities of citizenship and development. Women’s movements have broken many barriers by transforming the way women live and contributing to broader social and political changes. These movements may have varied in content pace and scale from country to country. But they have shared a common concern for the advancement of women and the progress of the society.

40 Ibid., p.131.
1.6.1 **Political Movements**

Early politicization of women took place in the context of broader social and political necessities. Since the end of the 19th century, women have been active in national liberation struggles in civilized countries where democracy began to spread a force to be reckoned within the participation of women in the political movements. It helped to create an understanding of women’s situation and fuelled the growth of a more explicitly feminists movement. The first phase of the women’s movement centered on getting rights that men had already got, the right of citizenship, right to access to such social services as education and health. Women had taken active participation in the freedom struggles and all leaders of national movements recognized the need to integrate women into their platforms of national transformation. A common theme in all the movements was to struggle for equality of women in areas where men had already made progress.

Women’s movements have pressed for equal access to economic opportunities. Access to assets and services has been considered critical including raw material credits and financial and technical support services. In many Western countries women have demanded for social recognition of public and
private rights, particularly reproductive rights and equal rights in divorce, inheritance and wages.

1.6.2 Social Reforms

The social reforms have created some basic avenues for the growth of the idea of emancipation of women in India, by stopping barbarous practices such as sati (widow burning), child marriage etc.; women were given education and public participation in the national struggle. But all efforts failed to focus an image of the Indian woman who was free to decide for herself. It strengthened the patriarchal control by emphasizing values and ideals. It could not have attained without making her subordinate to familial, social and economic relationship.\(^{41}\)

The social reformers concern for preserving family structures was most visible in the content of education promoted by them. The purpose of education for women behind this progressive reform was amply clear. In fact, there seemed to be a broader agreement between reformers and revivalists on this issue such as widow remarriage, prohibition of child marriage etc., First and foremost was

that education for men directly related to the pursuit of employment. But female education had no economic functions, needs or development of professional skills or expertise among women.

The main public use of women’s education is to be more efficient in housekeeping, cooking and child care with a view to increase happiness within the home and facilitating progress of nation. Women’s educational project is thus always phrased in terms of both social and moral betterment and in totality as the welfare of family. The role of education is viewed as improving the efficiency of women as mothers and strengthens the hold of traditional values on society since women are better carriers of these values.\(^\text{42}\)

The other purpose of education of women is to fill the wide gulf created by changing socio-cultural context between man and woman. It created difficulties in the social and family structures. In order to develop a satisfactory relationship between husbands and wives, it became necessary to educate women. Education of women and reform of Hindu society were also important to counter the attacks and criticism of the British and to give an image of emancipated Hindu women.

1.6.3 Nationalist Movement

---

The issue of emancipation of women developed against the background of growing nationalist struggle. It aimed at achieving political independence from foreign rule. One of the various forms of resistance chosen to challenge British imperialism was to mobilize people by asserting their cultural superiority over the West. The selective notion of the Western values has contradictory implications for women. This meant that women should be educated, should be brought out in society, should know social graces, should involve themselves in national struggle, should be freed from practices like sati, they should shed all those things which gave Indian women an age of backwardness. Women were to act as the guardians of national culture, indigenous religion and family traditions while simultaneously involving themselves in activities outside the home.

Glorification of motherhood concept can be found in the writings of many social reformers associated with religious reform movements like Arya Samaj and Brahma Samaj. This glorification of the motherhood ideal had a far reaching impact on the ideological control over women. It glorified womanhood only through her reproductive function. It also served to keep

---

women out of the privileges like education and profession. When they were made available to them, they were wrapped in ideology of caring and nurturing.\textsuperscript{44} It also fosters a picture of economically dependent women, which at the same time depicts her as spiritually more powerful than man. In the words of Jasodhara Bagchi, “it was ultimately a way of reinforcing the social philosophy of deprivation as women.”\textsuperscript{45} This identification of cultures with patriotism and cultural parochialism prevented any debate on gender equality.

Gandhi envisaged the role of women which went beyond the narrow confines of their homes and families. And he raised the issue of personal dignity of women. Gandhi refused to subscribe to the doctrine of the infallibility of ancient law givers, who had denied freedom to women and suppressed their development. He said: ‘woman has the right to participate in the minute details of the activities of man and she has the same right of freedom and liberty as she. She is entitled to a supreme place in her own sphere of activity as man he has’.\textsuperscript{46} Gandhiji’s view was that purdah, child marriage, ban on widow remarriage, denial of education and property were all results of inequalities between men and women in laws and customs. He believed that women must labour under no legal

\textsuperscript{44}Sukumari Bhattachariya, \textit{Mothe hood in Ancient India}, (Delhi:1990), pp. 50-52.

\textsuperscript{45}Vina Majumdar,\textit{op.cit.}, p.23.

disability not suffered by man. He recommended equal shares of sons and daughters in parental property, joint ownership of husband and wife of the husband’s earnings as he makes money only by her assistance.\textsuperscript{47}

He advocated a new role for women. It was radically different from the ideology of division of labour between sexes. It has been historically an important tool for the oppression and exploitation of women. His leadership encouraged the growth of the women’s movement. It also strengthened certain characteristics which limited the effectiveness of women’s movement in raising their status.\textsuperscript{48}

\subsection*{1.6.4 Industrialization}

Much legislation was passed to regulate labour due to industrialization and growth of commercial contact. These legislations in their own way contributed to the decline of women in workforce and it was more important that they also introduced Western notion of family, family way, male bread earner and dependent housewives. For example, the Factory Act was passed to limit the hours of work. It differentiated (as sex segregation already existed) between the

\textsuperscript{47}Vina Majumdar, \textit{op.cit.}, p.23.

work of men and women, as women were pushed into the narrow range of lowest paid occupations.\textsuperscript{49} This idea of gradual reduction and the lowest pay led to the systematic exclusion of women from industry and forced the rational being women-to return to their traditional place- the home.

Industrialization and mechanization resulted in an extremely limited progress in this regard. In general, both men and women were affected adversely by the destruction of traditional home industry and competition with mill made material and mechanization. But still men were more fortunate. The reason was that the bulk of employment opportunities in the modern sector went to them. For women, this meant a permanent shift towards the periphery of the economy.

It is only in the present century and more especially during the war periods that steps had been taken place regarding women labour. During the First World War, women were recruited to the traditional male civilian jobs.\textsuperscript{50} This had brought to the forefront the problem of equal pay for equal work. Many started to support the cause of equal pay for the emancipation of women. More and more women began to enter into the labour world during war and post-war periods. They

entered into non-traditional occupation and began to compete with women. And womenfolk were forced to become a bread winner due to the loss of their husbands in the wars.

1.6.5 British Laws

During the British rule in India, diverse systems of laws existed. In addition to personal laws of various religious communities, there were also numerous practical traditions of customary and tribal laws applicable to different castes, tribes, and lineage or family groups. But, in actuality, with the establishment of judicial system, a necessity was felt to find out the laws of different communities. In the case of Hindus, pundits were attached to practically every level of court machinery to advise the courts on questions coming before them concerning Hindu law. This Hindu law was related to the issues of inheritance and marriage in accordance with Hindu Sastras. As a result, the process was to make the Hindu law applicable to many more communities. During the period between 1827 and 1887, several British acts and regulations were passed to recognize some textual

---


laws. The impact of Hindu social reform movements empowered the courts either to recognize the local customs and usages or Hindu religious laws.\textsuperscript{53} By following this, the Hindu law existed and applied to all Hindus led to the erosion of customary laws and propagation of orthodox Hindus values and Hinduisation of castes and tribes on the fringes of Hinduism.\textsuperscript{54}

In the early 19\textsuperscript{th} century some marginal adjustments were made in response to humanitarian considerations and social demands due to their efforts of the social reformers. The social reformers realized the government’s refusal to legislate on social matters. The way was opened to spread education more widely among the people particularly women. They felt, this could help to eliminate some of the inhuman practices and also act as an incentive to women to organize and demand legislative changes.\textsuperscript{55} The legislations like Hindu Remarriage Act referred to problems of widow especially child widows.\textsuperscript{56} It was a problem of higher Hindu castes that did not practice widow remarriage. But more significantly, the issue of remarriage of widows was intimately linked with the issue of retention or forfeiture of property that she inherited from her deceased husband which clearly seen. Moreover the plight of widows without any means of

\textsuperscript{55}Arunima Baruah, \textit{Women in India}, (Chennai: 2003), p.64. 
\textsuperscript{56}Ibid.
their own, depending entirely on the family led to the passing of the Hindu women’s Right to Property Act in 1929 followed by the 1937 act. These laws while making the widow less dependent financially during her lifetime, it stopped her from getting any substantial rights of ownership since her right to property was for life.\textsuperscript{57}

The demand for major changes grew as a result of the untiring efforts of Gandhi, who did not want women to suffer from any social or legal disabilities. The inferior position of women in all matters of guardianship, inheritance and divorce had an effect on the personality of the women. The demand for improvement and modification of the law grew well and the government was compelled to act. As a result, a committee was constituted under the chairmanship of B.N.Rau whose terms of reference included suggestions for change and the codification of Hindu law, so that all Hindu would be governed by the same law.\textsuperscript{58} Even though the report was ready, the resistance to change the setup was so great. No effective steps could be taken for many years. But fortunately, after India’s independence, India has relied heavily on legislation in its efforts to usher in a society where there is discrimination or inequality. It has

\textsuperscript{57}Ammu Abraham, \textit{Personal Law in India}, (Bombay:1990), p.102
\textsuperscript{58}Ibid.
sought to protect social and political disabilities by penalizing the practice of untouchability. By clearly emphasizing the principle of equality and removing all legal discrimination between sexes, the national leaders have shown their acceptance first to pass Hindu code bill. Moreover, they have shown their interests to provide complete liberty for women and all legislative traces of inequality of women without exception must be removed.

1.6.6 Mass Media

The mass media used for publishing certain measures taken by the government has been conspicuously silent about social legislation. If legislation reflects the social values of the country, the degree of women’s emancipation is the natural measure of the general emancipation in any given society. It is therefore necessary to pass legislation and also to see that it is implemented. But legislation cannot by itself change the society. To translate these rights into reality, it is the task of other agencies. Through the News papers, magazines, journals, public opinion has to be moulded to accept these rights. The judiciary and the executive branch of the government have to play a major role to educate the people about the socio economic change.
1.6.7 Constitutional Provisions

Under the Indian Constitution the status of women is equal to that of men. On the eve of the meeting of the Constituent assembly in November 1946 the congress adopted a resolution declaring that it stands for a Constitution where in social objectives were laid down to promote freedom, progress and equal opportunity for all people of India. The objective resolution drafted and moved by Pandit Nehru in the Constituent Assembly on December 14, 1946 was as follows.\(^5^9\)

i) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw for her future governance... (ii) Where in shall be guaranteed and secured to all people of India -justice, social, economic and political and equality of status and opportunity before the law. The main object of Constitution as enshrined in preamble is among other things to provide to equal status to all its citizens with out discriminating on the basis of sex.

\(^5^9\) *Constituent Assembly Debates*, vol.1, (Delhi:1946), p. 57.
1.6.8 Role of Law

Law plays an important role in defining the relations between men and women. And it has a potential to change the existing notions about the rights of men and women. These rights affect their status both within and outside the family. The laws and the grant of legal rights may not by themselves change the social system. But sometimes they can help to change the mental makeup of the society and may be helpful to transform the economic and social position of women. Every small gain can help women to overcome some aspect of discrimination. It appears that even crude legal instruments can be important to the weak and disadvantaged groups in society and can give them atleast some power on political process.\textsuperscript{60}

In addition to this, in the modern societies, the pervasiveness of laws regulating almost all aspects of our lives cannot be ignored. This makes it even more important not only to strive for making the laws more egalitarian but also to understand the role of law in perpetuating or ameliorating the subordinate position of women in society. In India, law is to work as a double edged weapon.

\textsuperscript{60}C.Hoskyns, Women’s Equality and European Community, \textit{Feminist Review \textbf{vol.20},} (Delhi:1985), pp. 71-73.
As an ideological force it is meant to attack the social norms, which kept women in a state of dependency and powerlessness. At the same time, by granting women actual legal and economic rights in marriage and family to share own land, property and other productive resources, Women are to be made both legally and economically powerful to fight social impediments. It holds them back to ascertain what their due is.

This also required enactment of laws to stop violence against women as this violence is being inflicted on them due to their subordinate position in family and society.\textsuperscript{61} It paved the way for torture and murder of women. It was due to dowry demands, wife beating, rape and sexual harassment which resulted purely from man’s superior position in family and traditional value system.

The changes were required in the social and legal definitions of women’s primary and subsidiary roles as defined in laws like the Factory Act, the Minimum Wages Act 1948 and by social norms. Laws were also needed to challenge the double standards of morality for men and women as sanctioned by both written and unwritten laws. In other words, laws has to be used as a tremendous ideological force to attack and diminish patriarchal bastions of

\textsuperscript{61}\textsuperscript{61}Sadhna Arya, \textit{op.cit.}, p.183.
authority at various levels and empower women in such a way that they are no more exploited and are able to develop their full personality. In this sense, law was meant to be one step ahead of society and was intended to set new norms for the society. It was decided to perform the functions of legitimizing certain negative values prevalent in the society and legitimizing new social values and roles. For example, law against sati delegitimized the practice of burning of widows. Similarly law for equal wages for equal work serves to withdraw the social and legal sanction behind the unfair practice of paying unequal wages to women. Moreover, it tends to legitimize the value of gender equality in employment.

The main focus is here on the absence of certain rights to women. So, continuation of discriminatory and unequal laws is continuing despite Constitutional commitment to equality of sexes. The research deals with the legal inequalities and discrimination in inheritance and property rights as contained in personal and customary laws between men and women and gross inadequacy of economic rights within the marriage.

The issue of gender subordination and property rights and control over family resources are related not only to who has the legal rights to own property,
but also to who actually controls the latter aspect. This is not because it is of lesser importance. But the emphasis is to understand the role of the state in challenging or sustaining subordinate rights of women in family through its legal system. The main reason for keeping the focus on economic and property rights of women is its direct relation with the under valuation of women’s work and contribution to household economy and denial of women’s democratic right to equality.

Therefore the theme of the study is related to gender equality and property rights of women in Tamil Nadu. It is to exhibit the social scenario which compelled the political atmosphere to enact new frames of law. An emphasis is made to understand the role of the state in challenging the attitude and aspiration of the social custom which subordinated the women and undervalued their role in shaping the nation. The introduction of the Hindu succession Act of 1956 opened the gates of equality for women. It has many unique features.

### 1.7 The Hindu Succession Act of 1956

Efforts to achieve equality for women in every sphere of life have been taken both at the national and international level. The Indian Constitution and
various enactments have been brought out to achieve equality. So far, the equality of women within the family has been neglected but the independent India in her Constitution, not only grants equality to women, but also empowers the state to adopt measures of affirmative discrimination in favour of women.

The unenviable position of women in Indian society has always fermented the minds of social reformers, planners and administrator’s collective efforts have been made, particularly after the Indian independence, to raise women from their present state and to bring them on par with men. As a consequence several measures have been adopted with the fond hope that women would become self-radiant and would move towards social equality.\(^\text{62}\)

As a result, much legislation had been passed namely Hindu Marriage Act, the Hindu Succession Act of 1956. It contains provisions for women to achieve equality on par with men. Any law of succession has its own importance. The Hindu Succession Act of 1956 has an added importance. Because it seeks to intestate and testamentary succession of Hindus uniform throughout India and maintaining the distinctive features of the prevalent systems as far as possible.

The act overrides all other rules of succession hitherto applicable to Hindus and as such the law as codified is simpler than before. The act has a wide application on account of the expansive definition of the expression ‘Hindu’ and it applies practically to every Indian who is not a Muslim, Christian, Parsee or Jew. A large number of heirs are eligible to inherit while the grounds to disqualify heirs are lesser in number than before the act. But the unique features of Hindu Succession Act are that (i) woman has been given equal rights in the matter of succession to the properties equally with men. (ii) The limited estate of a Hindu woman is abolished and she is entitled to deal with the property inherited by her as a full owner (iii) she has the power of disposition of the property as men do.

At this juncture it is necessary to study the historical background of the Hindu Succession Act. Only then, one can understand the unique features of the Hindu Succession Act in the right perspective. Therefore the next chapter makes a study of the historical background of the Hindu Succession Act 1956.