CHAPTER - 2

HISTORICAL PERSPECTIVE
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The present chapter attempts to provide a historical context to the study of the position of woman through the ages.

1. **Position of Woman in Vedic Period:**

In a Vedic period woman participated in all fields like man and took active part in human life. During that period woman enjoyed a fair amount of freedom and equality with man. Woman studied in Gurukul. For a long time girl in higher societies were allowed to undergo Upanayana rite. The great woman like Ghosa, Apala, Lopamudra, Gargi, Indrani, Yami and others had distinct qualities of art, music, dance and even fighting in the battle. Purdah was not prevalent in Vedic period. In the matter of selecting the life partner in marriage woman had equal right. The example of polygamy was rare and mainly confined to ruling class. Dowry system was prevalent in rich and royal families only in the form of movable gift. A widow could marry again in Vedic times there was no discrimination
between boy and girl. There were two classes of girls: (i) the Brahmvadini students, who donned the sacred thread, tend to fire and study one Veda, but in distinction from the boy students, do the begging for alms within their own parental home and (ii) the Sadyo Vadhey who are given only symbolically and formally, immediately before marriage. Woman must have enjoyed a quality of life comparable to that of the man.²

2. **Position of Woman in Post Vedic Period:**

   The basic rules for woman’s behaviour as expressed in the laws of Manu insist that a woman must constantly worship her husband as a god even though he is destitute of virtue or a womanizer. Woman should be kept in dependency by her husband because by nature they are passionate and disloyal. The ideal women are those who do not strive to break these bonds of control. The salvation and happiness of woman revolve around their virtue and chastity as daughter, wives and widows.³ The role of woman got restricted to the four walls of their home. During 500 BC to 500 AD, which can be
approximated to the period of early smrities, the epics of Ramayana and Mahabharata and the early Puranas, the Upanaya rights for girls were completely abandoned. During the Puranic and Epic period, there was restriction of the age of marriage of girls, deprivation of woman in various areas.

Beside, relegating woman to a lower position, there are ritual and practices for a woman, which re-enforce her role as a devout wife and doting mother. Women perform a large number of the yearly calenderical rites. These rites seek the protection and well-being of crucial kinsman (especially husband, brother, son). Man's rites are not concerned with having good wives or one who will have a long life.

One important point understanding the value structure in Indian society is the dual concept of the female in Hindu philosophy. On the one hand woman is fertile, benevolent best lover of prosperity; on the other hand she is considered aggressive, malevolent and destructive. This dual character manifest self in the goddesses also as
there are dangerous, aggressive, malevolent goddess like Kali and Durga there are equally important goddesses like Laxmi, Saraswati, Mariamman who are benevolent. Veena Das, while analysing the anthropological meaning of prevalence of the worship of goddess usually stands alone and is not encompassed with a higher male principle. She adds. “The principle of power find expression in the goddesses who represent shakti, who come to the aid of man and the god in period of cosmic darkness, by killing the demon who threaten the entire cosmic order. The principle of renunciation on the other hand find expression in the ideals of Sati”.

The customs of widow burning came into existence around 400 A.D. Though there are instance of widow surviving their husbands and offering them funeral obligations, on the whole position of widows was not so honorable before this period.

The widow marriage was prohibited. The practice of ‘Sati’ was recommended by many of the
later authorities and was well-established by the end of 6th Century A.D. The practice prevailed early as Alexander's invasion about 325BC. Travelers like Strabo, Megasthenes and Diodorus who accompanied Alexander, allude to this practice. The lawgivers forced the widows to lead a life of austerities, fasting and abstinence of pleasure.

Unjust, archaic social customs like child marriage, 'Sati' and polygamy reduced the status of woman to the level of mere goods or a chattel. They were regarded as 'nari-sudras'.

3. **Position of Women in Islamic Period:**

In the Muslim period, i.e. in the 11th century onwards the position of woman further deteriorated. Woman faced a number of hardship and cruelty due to evil practice like child marriage. The purdah system, sati, widowhood, prostitution and devdasi system. As Hate mentions, the advent of the Muslims arrested the progress of Hindu Civilization and era of blind faith and perpetuation of old customs followed.
During this period the role of woman confirmed to the dictum laid down by Manu, the great law giver in the second century that, 'a widow does not deserve freedom and that her life throughout be one of dependence on man. Another dictum was that a woman should be subservient in all stages of her life in childhood to the father, in youth to the husband and his elderly kinds and to the sons when widowed.9

The position of the daughter in Hindu Society reached at nadir. As child marriage was a common practice of the social life of Mughal period. In some cases the marriages were performed at the age of nine or ten year even before they had learnt to talk.10

Along with the insecurity and uncertainty, which prevailed in the Mughal period, the practice of Purdah became rigid. Both Hindu and Muslims woman lost there's liberal activities and became the property of their male masters. As result the social life of woman's narrowed down.11
The practice of torturing of widows was prevalent in upper caste until recently. It is believed to have come into vague in about 8th century A.D. This practice of torturing of widow is believed to have adopted by the Brahmins under the influence of Buddhism.

From time to time, Protestant movement like Buddhism, Jainism, Vaishnavism, Veerashaivism and Sikhism made sincere efforts to improve the status of woman. Buddhism considered male moves a superior to the runs. In Jainism though woman were given a respectable position in congregational life, they were condemned severely. In the 12th century Veerashaivism permitted their woman the right to divorce and remarriage. The Bhakti movement also played vital role in raising the status of woman by allowing them to seek spiritual solace independently.

By the thirteenth or fourteenth century, the dowry system became a positive evil of great magnitude, particularly among the higher classed.
During the Mughal period, Aine-Akbari has traced the evil of dowry.\textsuperscript{14}

The 18\textsuperscript{th} century was a period of all round declines in India. It was the darkest period so far as women were concerned. Political decay following the disruption of the Mughal Empire and disorders were visible due to the advent of various European powers. Under the new conditions woman lost their independent identity. They were totally and forcefully subjugated to male superiority.\textsuperscript{15}

Cousin, referring to the status of woman at the end of the 19\textsuperscript{th} century was at the lowest point of literacy, of individuality, of health, of social status, of initiative of economic status of power, or of her security.\textsuperscript{16}

According to Dube, the deterioration in the status of woman brought about a number of consequences. He says “it was inevitable that their character and personality should also be effected. The uneducated were considered on the level of shudras, married before their character were fully
developed, transfer from loving atmosphere of the parent's house to the house of parents-in-law.\textsuperscript{17}

The reasons that are responsible for the deterioration of the status of woman in India were (i) joint family system, (ii) polygamy and sati practice, (iii) enforcement widowhood, denial of the right to divorce and right to remarry after widowhood, (iv) child marriage and purdah system. Because of child marriages too much older man there was an increase in number of widows. Their entry to social, political, and religious functions were prohibited. During this period one finds exceptional woman like Chand Bibi, Laxmi Bai, Nur Jahan, Kittu Rani Channamma who made their remarkable impact in the field of administration.\textsuperscript{18}

For the upliftment of woman in India several factors are responsible. The first one was the direct influence of the British noted for their courtesy towards woman, the general awakening of Asian in the 20\textsuperscript{th} century and the political struggle for Indian's independence also gave considerable force to the feminist movement in India.\textsuperscript{19}
The position of girls, woman and widows were improved during the British period. They introduced female education in India. In 1929 they passed the Child Marriage Restraint Act. By which restricted the evils of early marriage and increase the number of widows. This Act not only prohibits the child marriage and raised the minimum age for marriage of girls to 14 years.

The social status of wife also improved during the British period because of rise in female education and the rise in the age of marriage. The Hindus Woman's Right of separate residence and Maintenance Act of 1946 enables Hindu wives to claim maintenance without having judicial separation under some circumstances.

No man in India has done more than Gandhi for their elevation and occupation by women of their rightful place in domestic and public life. passionate lover or humanity, an implacable force of injustice in whatever form or sphere, it is small all wonder that Gandhi so greatly espoused the women cause. He preached forcefully against the
wrongs done to women in the name of law, tradition and religion. He fearlessly speaks against enforced widowhood, purdah, dedication of girls to temples, prostitution, early marriage, dowry system, the economic bondage and material of women.

Gandhi championed the cause of women. He considered women as the incarnation of ahimsa means infinite love, which again means infinite capacity for suffering. Who but woman, the mother of man, shows this capacity in the largest measure let her forget she ever was or can be the object of man’s lust and she will occupy her proud position by the side of man as his mother, maker and silent leader. It is given to her to teach the art of peace to the warring world thirsting for that nectar. Gandhi, considered women as ‘the personification of self sacrifices. He was against the purdah system. He wrote: ‘Chastity is not a hot-house growth it cannot be superimposed. It cannot be protected by the surrounding wall of purdah. It must grow from within, and to be worth anything.
Gandhi considered that marriage is a natural thing in life and to consider it derogatory in any sense is wholly wrong. The idea is to look upon marriage as a sacrament and therefore to lead a life of self-restraint in the married state. Gandhi was as much a friend of children as of older people. The instinctively saw the light of love in his eyes and were attracted to him. About Kanyadan in the case of little children? Has a father any right of property over his children? he is the protector, not owner. The father forfeits the privilege of protecting when he abuses it by seeking to barter away the liberty of the ward.

In spite the cruel practice of 'sati' its incidence was on increase throughout the 17th and 18th centuries because at that time religion had become corrupt and the priests governed people. Hindus at that time were under lighted and had become strict follower of customs. People firmly believed that man's sins were completely washed out if his widow was burnt alive with his dead body.
The pitiful and pitiable plight of the widows who were forced to commit 'sati' attracted the attention of a good number of enlightened Indians and the Britishers under the leadership of Raja Ram Mohan Roy and Lord William Bentinck. In spite of the strong opposition, a historic revolution of great importance was passed on Dec. 14, 1829 by which 'sati' was made a crime of culpable homicide punishable with fine, imprisonment or both later the British realised that they could stop 'sati' by police force but that they could not arrange the remarriage of widows.

The familial, social and legal position of Hindu Woman was greatly improved during British period, as compare with the Muslims period but violence against her were not decrease. During India's struggle for independence, thousands of woman took part under the leadership of Mahatma Gandhi, Sarojini Naidu, Vijay Laxmi Pandit. Gill has rightly observed about the achievement with regard to the status of woman during British period.
4. **Contemporary Modern Period:**

Due to the principle of democracy based on liberty, a woman's role began to change towards greater emancipation from man's domination. The role of wife-mother affected by this new freedom. In India, due to efforts of social reformers and social legislations, woman were brought out of the confines of their home. The process of industrialization and urbanization had their share in the changes which followed. It was the 20th century that brought about dynamic change and new concept which affected the status of woman given them fresh dignity and importance.

Woman faces innumerable problem and discrimination only because they are woman. Discrimination on the basis of gender or can be witnessed, in present social system, in every walk of life. In India the sex ratio is in favour of male. She is considered to be an object of sex in our society.

The Indian constitution has incorporated in its objective the principle of equality. It has also
proclaimed the equality of man and woman in all domains of life.  

In Article 15 and 16 of the constitution it is mentioned. Under Art 325 and 326 women have not only given voting rights but also the right to stand for election. They can take part in political life of country. Art 39 provides equal pay for equal work irrespective of 'sex'. The modern Indian legislation have stabilized the position of woman by offering her same rights, opportunities, and opening which men have.

The Hindu Succession Act, 1956 has statutorily recognized the right to property of the Hindu daughter. Dowry system, are abominable social evil, which makes young woman's life miserable, has been curbed by the enactment of the Dowry Prohibition Act of 1961. Education is also made free and compulsory for all the children of 5-14 age group. Accessibility to education and availability of increasing opportunities for acquiring education has bought about tremendous changes in the role of woman.
At present wife enjoys a respectable position. She can even live separately U/S. 18 of the Hindu Adoption and Maintenance Act, 1956 and can claim maintenance. The wife under section 8 can adopt a son. Under the Hindus Marriage Act, 1955 both husband and wife can claim divorce.

Widow Remarriage is legalized; Sec. 14 of the Hindu Succession Act, 1956 has made her the absolute owner of the property. Under Sec.6 of the Act she inherits the coparcenary interest of her husband along with the son and daughter. Sec. 6 of the Hindu Minority and Guardianship Act, 1956, recognises her as the natural and legal guardian of her minor children after their father. These legislations have promoted emancipation of woman to a very large extent. Besides these legislations, under the provision of the Directive Principles of State Policy, each state has undertaken woman's welfare programmes. There is hardly any field today wherein woman have not entered.24

The United Nations by declaring 1975 as woman's year and the next decade as Woman's
Decade called upon its member states to develop new measures for emancipation of woman and to ensure equal opportunities and equal respect and recognition in all fields.

In a nutshell it can be said that education and woman’s participation in all fields of economy, science and culture will help them in achieving the real equality. But the crime record against woman increase day by day in the modern era. We read daily in newspaper the dowry death of woman and the news of rape. We read many news of rape of girl by their father or other relatives in their four tour walls of house.

**Muslim Law**

Three different sets of views were expressed by Muslim women interviewed by us: (a) the educated middle classes in U.P. were opposed to any change whatsoever; (b) the poorer women of the same state expressed a desire for monogamous marriages and denounced the inequities of polygamy; and (c) there
was a uniform and emphatic demand, from women in Kashmir, for the banning of polygamy.

Muslim Law regards marriage as a contract. Some jurists have advocated the adoption of a standard contract providing, *inter alia*, that the wife shall have the power to divorce her husband if he takes a second wife. Although this remedy is advocated for the prevention of polygamy, it will not obviously provide any substantive relief to the first wife children, nor seriously affect the position of the husband because the second marriage would remain valid and the act of bigamy would not be legally wrong. It would also be ineffective to prevent fake conversions to Islam to evade the prohibition of bigamy under other laws.

While the desirability of reform in Muslim Law is generally acknowledged and polygamy has been prohibited in most other Muslim, countries, the Government of India has taken no steps in this direction, on the ground that public opinion in the Muslim community does not favour this change. Ignoring the interests of Muslim women is denial of
equality and social justice; and therefore, there can be no compromise on the basic policy of monogamy being the rule for all communities in India.

The Muslim marriage is a contract between two parties of different sexes who agree to cohabit on certain terms.

The ceremony of "nikâah" binds the two together, unless a divorce takes place, for life. In Sunni law, the ceremony must occur in the presence of two witnesses, if it is to be valid. The presence of witnesses is not a prerequisite in Shia law. Both parties must agree to be married though, in the case of the bride, silence is interpreted as consent. Divorce is an integral part of Muslim law, as is the provision for more than one wife. Though advised against, it is accepted in religion and in Indian law that a man may have up to four wives. If he marries a fifth time, while still being married to four other women, the marriage is not void, but irregular. It may be rectified by divorcing any one of the other wives at a time later than the performance of the fifth ceremony.
MEHR

Mehr is the dower or form of bride price paid by the man to the woman he marries. It is meant to protect her in case of abandonment in favour of other women, divorce, or neglect by maintaining her.

RIGHTS AND DUTIES OF A WIFE UNDER MUSLIM LAW

Apart from cohabiting with her husband under all normal and acceptable conditions, and his right to demand obedience from her, a Muslim woman is bound to observe purdah in accordance with the social position of the parties and local custom.

She is entitled to maintenance from the husband in a manner suitable to his economic status, regardless of her own wealth. She is also entitled to an equal share of his company and equal treatment in all respects to his other wives. She is also entitled to dower and residence at his house.
She does not lose her identity, but is at liberty to deal with her property independently.

Upon death or divorce, she is bound to observe *iddat*, for the duration of three courses i.e. she may not marry or engage in sexual activity for three menses. In case she is pregnant, this period extends to the duration of her pregnancy or for four months and ten days, whichever is longer.

A woman married in the *Muta* form is not entitled to maintenance under the Shia Law. But it has been held that she is entitled to maintenance as a wife under the provision of Sec. 125 of the Criminal Procedure Code.

**Divorce**

**Muslim Law:**

Under Muslim law, a husband has an absolute and unlimited right to repudiate the marriage at, his will, but a Muslim wife has no such right. Traditional law permitted her to seek dissolution under three forms: (a) divorce where the husband delegates the right of divorce to the wife in the
marriage contract stipulating that she may divorce him on his taking another wife; (b) divorce by agreement on the wife's giving some consideration to the husband; and (c) divorce by mutual consent. Taking advantage of the law enunciated by the mutual consent. Taking advantage of the law enunciated by the Maliki and Shafi' schools the dissolution of Muslim Act, 1939, recognizes the wife's right to divorce on the following grounds:

a) Husband's disappearance for four years;

b) Neglect and failure to provide maintenance for two years;

c) Husband's imprisonment for seven years or more;

d) Failure to perform marital obligations for three years;

e) Impotency;

f) Insanity, leprosy, general disease;

g) Option of puberty; and
h) Cruelty or any other ground recognized as valid for divorce under Muslim Law.

This Act has benefited many Muslim women. The most frequently used grounds are the option of puberty and failure to provide maintenance. In the latter case, courts have occasionally denied the right to a wife where her conduct was such as to absolve her husband from his duty to provide maintenance. In such cases, however, a more reasonable view is that taken by Justice Krishna Ayyar who observed that there is nor merit in trying to preserve a marriage which has in fact broken down. It is therefore serve a marriage, which has in fact broken down. It is therefore recommended that the right to divorce on the failure of the husband to provide maintenance should be irrespective of the wife’s conduct.

In spite of the right provided by the Act of 1939 and the customary forms, a Muslim wife continues in a position of legal inferiority and insecurity as long as the husband’s unilateral right to divorce
continues to be recognized other Muslim countries have already restricted this right. It is recommended that immediate legislation should be undertaken to eliminate this unilateral right of divorce by the husband and to introduce parity of rights for both partners regarding grounds for seeking divorce.

Maintenance

Muslim Law:

While maintenance of the wife is the highest obligation of husband in Muslim law, the wife must be accessible to the husband and obey his reasonable commands. A divorced Muslim wife has no right to maintenance beyond three months. There is no justification for such a discrimination and we recommend that the right to maintenance should be extended to divorced Muslim wives.
Adoption and Guardianship of Children

Muslim Law:

A Muslim father's position is dominant and his right with regard to guardianship is very wide indeed. The mother is not recognized as a natural guardian even after the father's will (Shias do not recognize this when the mother is a non-Muslim). Muslim law, however, recognizes her prime right of custody of minor children, which cannot be deprived even by the father except for misconduct. There is a difference between the Shia and the Hanafi schools regarding the age when the mother's right of custody terminates. In case of a minor son, the Shia school holds that the mother's right is only during the weaning period, i.e., till the child reaches the age of two years. The Hanafi School extends this period to seven years of age. In case of minor girls, the age of seven, and the Hanafi law till the stations puberty. Both schools agree that only the mothers should have custody of a minor married girl till she attains puberty.
Inheritance

**Muslim Law:**

Muslim law, while recognizing the rights of women to inherit, discriminates between male and female heirs of the same degree, the share of the latter being half that of the former. We recommend legislation to give an equal share to the widow and the daughter along with sons as has been done in Turkey.

**HINDU MARRIAGE ACT**

While bigamy has been made an offence for the Hindu and the second marriage is void in law, such marriages are still prevalent, as evidenced by a census study in 1961 and case brought to the notice of the committee during its tour in the States of Manipur, Andhra Pradesh, Bihar, Uttar Pradesh, West Bengal, and Madhya Pradesh, Uneducated and economically dependent women find it difficult to go to court and are not always supported by their families in lodging prosecutions. Technical interpretation of the word solemnization of the
marriage also poses difficulties. It is therefore necessary to make the following changes in the law to make its enforcement more effective.

With the permission of the court, the right to initiate prosecution of bigamy should be extended to persons other than the girl's family to prevent the current widespread violation of the law.

In section 17 of the Hindu Marriage Act, 1995, the words solemnized should be replaced by the words goes through a form of marriage. Further, an explanation should also be added to the section to the effect that an omission to perform some of the essential ceremonies by parties shall not be construed to mean that the offence of bigamy was not committed, if such a ceremony of marriage gives rise to a *de facto* relationship of husband and wife.

A provision should be introduced in Section 6 of the Hindu Marriages Act, 1955, to the effect that nothing contained in the Act shall prevent a court from granting an injunction against a proposed bigamous marriage.
Divorce

Monogamous marriage without the right of divorce causes great hardship to both parties. The concept of union for life of the sacramental nature of marriage which renders it in dissoluble has been introduced in all legal systems in India. The laws are however characterized by variations and unequal treatment of sexes. According to the Census of 1971, there are 870,000 divorced or separated women of whom 743,200 are in the rural areas and 127,500 in urban areas, the ratio being 1,630 women per 1,000 men. The figures for 1961-71 indicate a distinct drop in the percentage of divorced and separated persons over the decade, although the proportion of women was higher than that of men in both rural and urban areas. A census survey in 1961 indicated wide acceptance of divorce by the village community. Its incidence was the highest among Muslims followed by Hindus, Buddhists, Jains, Sikhs, and Christians. Adultery, barrenness, and extreme poverty were the most common grounds for divorce.
Contrary to the general notion regarding the indissolubility of Hindu marriages, customary forms of divorce, recognized both socially and judicially, have been widely practiced among the lower castes. The most usual forms are: divorce by mutual consent, by the husband, and by deeds. Under customary law there is no waiting period after divorce for remarriage. The other advantage of these forms are against public or morality, a divorce under customary law may be rejected by a court. It has been suggested that an exhaustive record of these customs should be prepared which forms should be made invalid. Copies of this will be prepared which forms should be made invalid. Copies of this record should be made available to the people and to the panchayats.

The Hindu Marriage Act, 1995, permits divorce to both parties for (a) living in adultery; (b) conversion; (c) insanity; (d) communicable leprosy; (e) venereal disease; (f) renunciation; (g) disappearance for seven years or more; (h) failure
to resume cohabitation for two years after a decree of judicial separation; and (i) failure to comply with a decree for restitution of conjugal rights. A wife has two additional grounds; (a) if the husband has another living life; and (b) if he has been guilty of rape, sodomy, or bestiality. It was recommended that cruelty and desertion should be included as grounds for divorce in this Act, to prevent the circuitous route of obtaining a judicial separation first and then seeking divorce after two years.

The interpretation of reasonable cause for desertion or restitution of conjugal rights as made by the judiciary is not satisfactory; and in certain cases, the judiciary’s attitude to the wife only in cases of genuine economic necessity, it is recommended that difference in the place of work should not be regarded as a ground for desertion or restitution of conjugal rights.

Sections 13 and 14 of the Hindu Marriage Act deals with the divorce. Section 13 of the Act states that adultery and cruelty are each sufficient grounds for obtaining a divorce. Cruelty need not
be physical, and apprehension of damage to body or mind or health is also termed cruelty under this section. Mental cruelty must be such that it has adverse effects on the petitioner’s health, or can be proved to have such effects in future.

ADOPTION AND GUARDIANSHIP OF CHILDREN UNDER HINDU LAW:

The Hindu Minority and Guardianship Act, 1956, upholds the superior right of the father and makes him the first (the mother being the second) natural guardian for boys and unmarried girls. The father has however lost his previous right to deprive the mother by appointing a testamentary guardian. The prior right of the mother is ordinarily recognized only to custody of children below five years of age. She has also a better claim than the father in the case of illegitimate children. The Act also directs, that in deciding guardianship, courts must take the welfare of the child as a paramount consideration. A recent decision of the Supreme
Court observed that, in special circumstance, the mother could be the natural guardian even when the father was alive. It is hoped that this decision will guide lower courts and prevent them from invariably upholding the father's right even against the child's interest.

MAINTENANCE UNDER HINDU LAW:

Unlike criminal law where the wife's claim for maintenance depends on the husband's having sufficient means, under Hindu law, this right is absolute but is lost if the wife becomes unchaste. In assessing the amount of maintenance the court takes into account the position and the status of the parties, the reasonable wants of the claimant and the obligation of the husband. It also judges the justification for the wife's living separately. This act does not also limit the obligations of maintenance to the man only.
Inheritance

**Hindu Law:** Pre-independence India had several systems of succession among Hindus, in most of which the position of women was one of dependence with barely any proprietary rights. Even where they enjoyed some rights, they had only a life interest and not full ownership. The Hindu Succession Act, 1956 made some radical changes, the most important being is the equal rights of succession between male and female heirs in the same category (brother and sister, son and daughter). It also simplified the Mitakshara and Dayabhaga schools and extended the reformed law to persons in South India previously governed by the Marummakkattayam. Its greatest progressive gesture is the recognition of the right of women to inherit and the abolition of the life estate of female heirs. The Class I heirs of a man who takes the property in equal shares as absolute owners are the widow, the mother, son, daughter, widow of a predeceased son, and sons and daughters of predeceased sons of daughters.
Unfortunately, traditional resistance led to some compromises in the original intentions. For instance, the one major factor responsible for continuing of the inequality between son and daughters is the retention of the Mitakshara coparcenary, whose membership is confined only to males. A numbers of decisions and laws like the Hindu Women's Right to Property Act and Hindu Succession Act have made encodes in the concept of the coparcenary. The Hindu Code Bill, 1948 as amended by the Select Committee, had in fact suggested abolition of the coparcenary get a share of his property which ensures that the female heirs of a male member of the coparcenary get a share of his property which is demarcated by a notional partition. In consequence, the sons get a share of the father's property in addition to their own interest as coparceners. Under the Dayabhaga system, the daughters get equal shares with the brothers, as there is no right by birth for sons. The right of a coparcener to renounce his share in the coparcenary and to transform his self-acquired property into joint family property is frequently
used to negate or to reduce the share of a female heir. We, therefore, recommend the abolition of the male right by birth and the conversion of the Mitakshara coparcenary into a Dayabhaga one.

Section 4(2) of the Hindu Succession Act, 1956, excludes the evolution of tenancy rights on agricultural holdings under states laws from the scope of the Act. This has led to the elimination land legislation in many states. Some states do not have, however, successfully excluded widows and daughters without giving any particular economic justification of such law. A typical example is the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, which is likely to apply to all agricultural land in that State in course of time. Similar discriminatory features are seen in some of the recent land ceiling laws adopted in different states, e.g., Karnataka, Punjab or Madhya Pradesh. In order to achieve the social equality of women as also in the interests of uniformity, we recommend the abolition of Section 4(2) of the Hindu Succession Act, 1956.
Section 23 of the Hindu Succession Act, 1956, relating to the right of inheritance to a dwelling house has also resulted in some discrimination between unmarried, widowed, and married daughters. While supporting the main object of the section which asserts the primacy of the rights of the family against that of an individual and restricts partition, we are not happy about the invidious distraction between married and other daughters since the right of residence is restricted only to those daughter who are unmarried or widowed and are deserted by or separated from their husbands. We, therefore, recommend the removal of this discrimination so that all daughters enjoy the same right.

The unrestricted right of gestation often results in depriving female heirs of their rights of inheritance. We, therefore, recommend the restriction of this right under the Hindu Succession Act, 1956.
CHRISTIAN MARRIAGE ACT

The laws relating to position of Christian women in India are as follows:

The Indian Christian Marriage Act, 1872 provides that every marriage between persons one or both of whom are Christians must be solemnised according to Christian rites. Marriage between two Christians or one Christian and one non-Christian which are not so solemnised are not recognised in law, except under the Special Marriage Act. The Christian Marriage Act, 1872 permits marriage between Roman Catholic and Protestants.

A marriage may be solemnised between two persons either or both of whom are Christians if neither party has a living spouse at the time of marriage, neither party is either idiot or lunatic at the time of marriage, and the parties are not within prohibited degrees of relationship. The legal age of majority as in all marriages is 18 for women and 21 for men.
Christian marriages are registered in a record kept at the Church. This record of marriage is recognised as a proof of marriage, by the State. The record bears the name, date of birth, parentage and signature of each of the contracting parties. They also verified by the signatures of two witnesses. A civil registration of marriage is, however, valid in law. There is some ambiguity as to whether marriage between a Roman Catholic and a non-Christian is valid. However, dispensations have been granted by the church for such marriages.

DIVORCE UNDER CHRISTIAN LAW:

The Indian Divorce Act, 1869, which governs all Christians, discriminates between the husband's wife has committed adultery. The husband can do so if the wife has committed adultery. The wife has to prove a second offence along with adultery (incest, bigamy, cruelty, desertion) in order to obtain a divorce. The Law Commission prepared (in 1960) to draft bill to this law on the lines of provisions for divorce under the Special Marriage
Act, 1954. The failure of government to give effect to this suggestion is much to be regretted and it is recommended that immediate steps should be taken to reform the Indian Divorce Act, 1869 on the lines suggested by the Law Commission.

MAINTENANCE UNDER CHRISTIAN LAW:

They concede the right only to women. In fixing the quantum of maintenance, the courts bear in mind the husband’s ability, the wife’s own assets and the conduct of the parties. The Indian Divorce Act, 1869, which governs Christians give discretion to the benefit of the husband or the children if divorce has been obtained by the husband because of the wife an adultery. If the court has decreed damages to the husband against the adulterer, it may order the settlement of the whole or part of this amount for the benefit of the children or maintenance of the wife.

In order to minimize the hardship caused by non-payment of maintenance and to ensure
certainty of payment, it recommends that all maintenance amounts should be deducted at the source by the employer as in the case of income tax. Where this is not possible, arrears of maintenance should be recovered as arrears of land revenue or by distress as in the case of fines under the Criminal Procedure Code. The best solution lies in entrusting the entire question of maintenance to specialized courts like family courts which could take into consideration the incomes and degrees of financial dependence of both spouses in settling such matters.

INHERITANCE UNDER CHRISTIAN LAW:

Christians in Kerela are governed by the Travancore Christian Succession Act, 1916, and the Cochin Christian Succession Act, 1921. Apart from multiplicity, these laws give only a life interest terminable on death or remarriage to a widow or mother inheriting immovable property. A daughter's right is limited to Stridhanam. Even in cases where she is entitled, she takes a much smaller share. We
recommend immediate legislation to bring the Christian women of Kerela under the Indian Succession Act, 1925.

In Goa, the widow is relegated to the fourth position and is entitled to only fruits and agricultural commodities. In Pondicherry, the laws relegate a woman to an inferior position and do not regard her as full owner even in the few cases where she can inherit property. We recommend the extension of the Indian Succession Act, 1925, to these territories.

SPECIAL MARRIAGE ACT, 1954:

Divorce under this secular form of marriage can be obtained by either party for adultery, desertion for three years, cruelty unsound mind, leprosy, venereal disease, continuous absence for seven years, non-resumption of co-habitation for one year following a decree of judicial separation of restitution of conjugal rights. In addition, the wife can obtain divorce on the grounds of rape, sodomy, or bestiality. A special feature of the Act is the right to divorce by mutual consent. It is recommended
that mutual consent should be recognized as a ground for divorce in all the personal laws so that two adults whose marriage has, in fact, broken down can dissolve it honourably.

Two general principles should be adopted for reforms of all divorce law: (1) there should be parity of rights regarding grounds for divorce for both partners; and (2) conversion to another religion should not be recognized as a ground for divorce as it offers an easy way of avoiding matrimonial obligations.

In the light of above discussion it can be concluded that status of woman had gone through ups and down in the Indians history. At some time in Vedic period or Post Vedic period, woman enjoyed almost all equalities with the man in all sphere of life like social, political, economic, cultural and even religious. Medieval period and Islamic period shows deterioration in the position
of woman and the time when British came to India. And many barbaric practices developed and woman was confined to a subordinate status. She used to be behind *pardah* and living in the seclusion. A wife was treated as a property of her husband. The subordinate position of woman was deep rooted in the Indian society of that period.

The 19th and 20th century shows efforts and attempts of the social reformer for the betterment of woman. In this present social system woman are facing various miseries, exploitation and oppression. Their husbands and relatives in their family and married life have exploited women. Woman's are violated by the men sexually or otherwise and the always remains silent because of limitations of society on her.
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