CHAPTER I

INTRODUCTION
The Problem

The struggle for legal equality has been one of the major concerns of the women's movement all over the world. Whether in the internal situation of her position in the paternal or matrimonial home or in the external situation of acquiring education, skills, professions, employment etc., all these involve the law. It is, however, necessary to realise that there are limits to the extent to which changes can be effected by law. Attempts at bringing about changes in the status of women through either legislation or judicial activism can achieve little success without a simultaneous movement to change the social and economic structures and the cultural values, ideologies and attitudes of society.

Hindu society is a patriarchal society and has patriarchal attitude to women's role and values in society. A plethora of legislations passed to ameliorate the status of Hindu women shows that Hindu society is male dominated and has a bias and discriminatory attitude towards women. Traditionally, Indian women suffered from inequality, social injustice and exploitation. The relationship of women to men has been that of total subservience. They were confined within the four walls of their houses. They were exclusively meant for child-bearing, child-rearing, managing the household tasks, looking after the husband's needs and taking care of the ever-flowing guests. They had no role to play in decision-making. The social inequality continued up to eighteenth Century. The Nineteenth Century and the early Twentieth Century saw the
outbreak of the socio-religious movement in India leading to a critical outlook of the very social systems. The influence of contact with Christian missionaries, the positive attitude and efforts of the Indian intellectuals and social reformers who questioned the prevailing cultural and social rigidities and religious practices resulted in some improvements in the status of women. By Nineteenth Century there arose a fighting spirit against all kinds of atrocities and the social reformers like Raja Rammohan Roy and the National leaders like Gandhiji through their writings and actions brought awareness and active participation of women who began organising themselves in a constructive way.

In India, the first movement for women's rights centered around three major problems, of infant marriages, enforced widowhood and property rights for women. The second major debate was on Hindu Code Bill which recognised that women were not accepted as men's social, economic or political equals and that these discriminations could effectively be reduced, if not eliminated, by passing appropriate laws. (So, after Independence, the legal reforms became progressive and bold legislative initiatives which translated Constitutional commitments and guarantees into laws to improve women's legal status have been enacted.)

The need to bring women into the mainstream of development has been a national concern since independence. The policy towards women is made clear in our Constitution. The Preamble to the Constitution of India ensures equality of status and opportunity. The Constitution also guarantees certain fundamental rights and Indian women are the
beneficiaries of these rights in the same manner as the Indian men. Article 14 ensures equality before law and Article 15 prohibits any discrimination. Article 15(3) empowers the State to make any special provision for women and children. Article 16(1) guarantees equality of opportunity for all citizens in matters relating to employment. Article 16(2) forbids discrimination on the grounds of religion, race, caste, sex, descent, place of birth etc.

The 'Directive Principles of State Policy' is a vital part of Indian Constitutional law. Some of the directive principles are concerned about women. Article 39(a) directs its policy towards securing the right to an adequate means of livelihood for men and women equally, and equal pay for equal work for both men and women. Article 42 makes provision for securing just and humane conditions of work and for maternity relief. Article 51 A(e) denounces practices derogatory to the dignity of women.

Several legal measures were taken during the last few decades to improve the position of women in India. Some of these enactments include Hindu Marriage Act, 1955; Special Marriage Act, 1954; Dowry Prohibition Act, 1961; Hindu Succession Act, 1956; Hindu Adoption and Maintenance Act, 1956; Child Marriage Restraint Act, 1929 and further amended in 1978; Hindu Widows' Remarriage Act, 1856 and amended in 1983; Suppression of Immoral Traffic in Women and Girls Act, 1956 and was further amended in 1978 and 1986 and was retitled as "The Immoral Traffic (Prevention) Act, 1986" etc. These laws have been aimed at preventing and reducing inequalities and social injustice against women.
Women have lagged behind men in different spheres, especially in education, health and occupational status. According to 1991 Census, the female literacy rate is 32.4 per cent as against 52.6 per cent of male literacy rate, and has been consistently been lower in rural than in urban sectors. In rural areas, where 48.5 per cent of the female population lives, women's literacy rate is only 25.1 per cent. While the urban literacy rate for females is 54.0 per cent (Census of India, 1991) (Table 1: P22)

Issues concerned with women's status and needs of women have assumed greater importance and attention with the declaration of the Women's Decade (1976-85). The 1986 SAARC Conference urged for an improvement in the status of women. In India, during seventies and eighties, special attention has been paid to extol the status of women and to put an end to discriminatory and inhuman practices prevailing in the society relating to female child. The declaration of 1990 as the Year of the Girl Child has further given an impetus to the struggle of women for their rightful and honourable place in the society (Madhu Shastri: 1990).

There has been, in general, a lack of awareness among the people about various legislations and programmes being implemented for the benefit of women. Although the socio-cultural situation, to a great extent, keeps women isolated, lately by radio, television and other mass media have exposed them to information and knowledge oriented thinking, hoping such exposure will be resulted in creating consciousness and in loosening the hold of tradition.
In the Seventh Plan, the basic approach was to inculcate confidence among women and bring about an awareness of their own potential for development, as also of their rights and privileges through various mass media.) Special measures would be initiated for strict enforcement of the Dowry Prohibition Act and also to prevent harassment and atrocities on women.

Despite the Constitutional guarantees and specific legislations to protect the interests of women, they continue to suffer because of ignorance of their legal rights, strong social resistance to giving women their due share, lack of legal aid facilities and absence of strong women's groups in rural areas which can protect their interests. Socio-cultural traditions continue to assign a subordinate role to women, particularly in rural areas, subjecting the girl-child to discrimination of various kinds, including the elimination of unborn female foetus after prenatal sex determination tests.) The menace of dowry continues unabated, despite the legislation prohibiting it and prescribing stringent measures for violating the law.

(During the Eighth Plan, it is ensured that the existing safeguards for women against injustice and atrocities will be reviewed, loopholes removed and their implementation monitored. One of the basic requirements for improving the status of women is to bring about changes in the laws relating to inheritance of property to fully protect the interests of women and enable them to get an equal share in their parental property, whether inherited or self-acquired. Social
legislations for women will be effectively enforced with the help of women's groups. A National Commission on women has recently been set up to act as a watch dog body on matters concerning women. A Commissioner of Women's Rights is to be appointed. It is equally important to usher in changes in societal attitudes and perceptions in regard to the role of women in different spheres of life. This will be facilitated by the empowerment of women and will imply adjustments in traditional gender specific performance of tasks (Eighth Five Year Plan: 1992-97).

The Concept of Law, Equality and Patriarchy

Bentham and Austin signify by the term "legislation," any form of law-making. Gray defines legislation as "the formal utterances of the legislative organs of the society". Salmond defines legislation as "that source of law which consists in the declaration of legal rules by a competent authority" (Tandon:1988).

Law primarily deals with rules of external behaviour which persons are bound to observe in any society. Ever since the time when human beings began to associate themselves in some sort of groups, some rules of conduct were also found prevalent among them (Atchuthan Pillai:1985).

Law in a modern society performs two basic functions. It regulates human behaviour within an organised social structure and as such it embodies accepted social norms. Legislation regulating family life, for example, is often based on tradition or prevailing customs. Hindu Law, in fact, considers well established customs as a part of law. Law,
however, frequently performs another more interesting function. It often embodies the ideals for which the society is expected to strive. In such cases law performs the task of bringing about social reforms. Law may seek to eliminate social discrimination against women by conferring on them equal rights. The success of such laws depends on two factors namely, the type of law enacted and the backing that it receives from the leaders.

Legislations are additional and modern sources of Hindu Law. They have developed Hindu Law considerably. Most of the enactments have reformed the Hindu Law and some of them superseded it in certain cases (Gupta and Sarkar:1982). Social legislation in the words of Hogan and Inni "embraces action by government authority to eliminate elements... which are 'objectionable' and provide elements for which the system does not make provision". Social legislation thus tries to remove inequalities and benefit the whole community rather than a few individuals. It adjusts, supplements and sometimes replaces the existing legal system. In other words, in addition to ameliorating the social conditions of people, it bridges the gulf that exists between the existing laws and requirements of the society at a given time (Sinha:1983).

Equality is one of the objects of law. In an arrangement designed to give to all men the greatest possible sum of good, there is no reason why the law should seek to give more to one individual than to another. There are abundance of reasons why it should not; for the advantages
acquired on one side, never can be an equivalent for the disadvantages felt upon the other. The pleasure is exclusively for the party favoured; the pain for all who do not share the favour. Equality may be promoted either by protecting it where it exists, or by seeking to produce it (Bentham:1975).

Locke emphasised that the equality of subjects is not to be taken in a literal, mechanical sense. All men are by nature equal. Age or virtue may give men a just precedence. Excellency of parts and merit may place others above the common level. Birth may subject some... the equality which Locke spoke of is that equal right that every man has to his natural freedom without being subjected to the will or authority of any other man (Mc Donald:1968).

The family with its patriarchal dominion of men and its compulsory matrimonial right is, indeed, still regarded (by some) as a consequence of the Fall... Others argued that the manner of Eve's creation proves that the subjection of woman is in the natural order of things; however, the overlordship of man was only established when the curse was pronounced and Adam and Eve were driven out of Paradise (Schochet:1975).

Plato, the Greek Philosopher, was the first to accord women an equal status. Plato, in his book 'Republic' advocated for women - guardians of state, treating women at par with men. He believed in man - woman equality (Rama Mehta:1987). Aristotle's approach to woman is functional. Women are naturally inferior. They are meant for procreation. Man provides the form and the matter (Okin:1979).
Knox (1558) made a negative attempt with his inherent patriarchalism to show the moral, logical and legal inability of women to rule men. His conclusion was that the evils befalling England and Scotland were God's punishments to those nations for having allowed women to usurp authority. Knox maintained that no women could ever rule for the immutable decree of God... had subjected her to one member of the congregation, i.e to her husband.

Contrary to Knox, John Aylmer insisted upon the Divine right of Kings and said that no man might question God's wisdom in sending a Queen to rule. In response to Knox's implicit patriarchalism, he argued that the woman may rule as magistrate, yet obey as a wife (Schochet:1975). Hobbes insisted that if patriarchal sovereignty was a product of procreation then the mother should have an equal claim on the child. However, sharing of power is impossible because one cannot serve two masters and supreme power is indivisible. Locke reported that familial authority belonged to both mother and father. He felt that the paternal power of the society ought to be called the parental power in order to be more correct.

(Rousseau, the French philosopher is the author of equality, liberty and fraternity. He emphasized on 'nature' and determined a distinct place for women. He argued that women's procreative faculties make them unlike men who have limitless potential and rational, while women's potential is stunted (Okin:1979).
Bentham (1975), the propounder of the doctrine "greatest happiness of the greatest numbers", is radical in his approach. According to him, the sensibility of women seems to be greater than that of men. They are generally inferior in strength of body, knowledge, the intellectual faculties and the firmness of soul. The honour of a woman consists more in modesty and chastity; that of man in probity and courage... woman is better fitted for the family, and the man for the matters out of doors. The domestic economy is best placed in the hands of the women; the principal management of affairs in those of the men.

Mill did trust women as superior in moral goodness. He considered family as a school of sympathy in equality, of living together in love without power on one side and obedience on the other. He eschewed patriarchalism within family through a forward looking feminist. He did not perceive the injustice involved in institutions and practices which allowed man to have a career and economic independence and home life and forced woman between the two (Okin:1979).

Typical was the French administrator who declared that "the greater number of indigenous societies in Africa reserve for women a place which is clearly inferior, approaching that of a domestic animal" (Hardy:1939). Colonialism, as per the views of many, would foster the emancipation of non-Western women by raising living and educational standards. At the same time, women would be freed from the drudgery of farm labour and the oppression of their own social customs - evils that were said to include early betrothal, a lack of choice in marriage partners, and few or no divorce rights (Hafkin and Bay:1976).
A Chinese girl in a patriarchal society, married and entered her husband's family, leaving her own parents' home for good. In Confucian China, women ideally were weak, subordinate and subservient, exhorted to be dependent first on father, then on husband, and finally on son in the "three Confucian obediences" (Lehrn and Paulson:1980).

/\ Manu, the great Hindu law giver propounded the theory of perpetual tutelage of women. He merged the wife's individuality with that of her husband. He subjected her in childhood to her father, when married to her husband and when widowed to her sons. He permitted child marriage and polygamy. Women were confined within the four walls. Gradually all their fundamental birth rights were totally cut off—right to justice, freedom, education, equality—domestically, socially, legally, economically and politically (See Historical Review:23-34).

/\ Under the Roman law, wife was a baby, a minor, a ward, a person incapable of doing or acting anything according to her own individual taste, a person continually under the tutelage and guardianship of her husband. In the Encyclopaedia of Britanica, the legal status of women is summarised as follows: In Roman law a woman was even in historic times completely dependent. If married she and her property passed into the power of her husband... A woman could not exercise any civil or public office.

\ Above the English Common law, all real property which a wife held at the time of marriage became a possession of her husband. Starting with the Married Women's Property Act 1870 (Amended in 1882
and 1887), married women achieved the right to own property on par with the spinsters, widows and divorcees (Encyclopaedia of Britanica:1968).

According to Mosaic Law (Jewish), to betroth a wife to oneself meant simply to acquire possession of her by payment of the purchase money. The girl's consent was unnecessary. Divorce was the privilege of the husband only. In Arabia the women had no legal rights whatsoever in the social and political life of the country (Shamsuddin Shams:1991). In the present egalitarian perspective, equality means the removal of disadvantage. Egalitarian policies aim for equal treatment without prejudice or stigma; equal opportunity, the means to achieve socially desired ends. The idea of positive discrimination seems to go beyond equality, by seeking to compensate for disadvantage in society as a whole by favourable treatment in a selected area.

Status of women

The noted English evolutionist, Sir Henry Summer Maine (1861) used the word 'status' for the first time describing man's progress from a social order based on 'status' to one based on 'contract'. Weber (1947) defined 'social status' as a claim to positive and negative privilege with respect to social prestige based on one or more of the following: (i) mode of living, (ii) education and training, and (iii) birth or occupation.

Ralph Linton (1936) differentiates status and role and says that the polar positions in such patterns of reciprocal behaviour are
technically known as statuses. The term status, like the term culture, has come to be used with a double significance. A status, in the abstract, is the position in a particular pattern. It is thus quite correct to speak of each individual as having many statuses, since each individual participates in the expression of a number of patterns. However, unless the term is qualified in some way, the status of any individual means the sum total of all the statuses which he occupies. It represents his position in relation to the total society.

/ The International Encyclopaedia of Social Sciences (Sills: 1968) mentions the term status as under: "Age, sex, birth, geneology and other biological and constitutional characteristics are very common basis of status. Until about 1920, the term status was most commonly used to refer to either the legally enforceable capacities and limitations of people or their relative superiority and inferiority.".

/ Lal (1972) holds that: while the status of women in a society is determined by a number of factors, it is clear that the pattern of task differentiation in the family also provides valuable clues to the prevailing status of women in the society. Women's status will be lowest in a society characterised by firm differentiation between men's work and women's work.

/ The National Committee on the status of women (ICSSR: 1975) observes: "The term 'status' denotes relative position of persons in a social system or sub-system which is distinguishable from that of
others through its rights and obligations. Each status position is expressed in terms of role. Since each individual occupies a number of distinct statuses within a society, he/she performs a variety of roles. Status is realised through roles. This brings into focus the rights and opportunities provided to women by the state and socio-cultural institutions to perform these roles, which may not necessarily reinforce each other. Process of changes are responsible for divergence between the expected and the actual role behaviour.

According to Vina Mazumdar (1982), "status in a pure sociological sense denotes only position vis a vis other in terms of rights and obligations". Rekha Devi Raju (1988) defined status as a unit of a social system in its own social environments like social conduct, customs, traditions, beliefs and roles played by individuals and groups. Rights and duties are fixed by the society. So, her rights and duties, authority and control and respect gave her status. It may be ascribed or achieved.

A perusal of the foregoing definitions of status given by various social scientists indicate that the status of woman centres around her family roles. The term 'status' signifies the sum total of the various culturally ascribed roles one has to play and the rights and duties inherent in a social position. Besides the ascribed status, there is also the 'achieved status' which results from one's efforts and personal achievements. The concept of status is used to indicate the ordering of individuals in terms of attributes such as, level of education,
occupation, income, perception of one's status within the home and in
the community, decision-making role, the number of restrictions imposed
on one's activities, freedom and so on.

In the present study, an attempt has been made to examine the
relationship between the knowledge of legal rights and each of the
following aspects of the status -- SES, contribution of law to status,
mass media, self-esteem, decision-making power, restrictions imposed /
not imposed on women's activities and self-perceived life satisfaction.

Scope and Objectives of the study

Women form half of our total population and have always played a
specific and crucial role, whether visible or not, in society and
history. They form an integral part of development in its social,
economic, political and cultural dimensions. A woman creates life,
nurtures it, guards and strengthens it. In her tasks as mother she plays
a vital role in the development of the nation. This gift as custodians
of future generations make women prized objects in society worth
protecting and fighting for.

A new effort has of late been made towards understanding,
empirically, the impediments involved in elevating the position of
women. Importance of research has, thus, been realized. Consequently,
several research bodies at the levels of university and similar
organisations have been created to examine intricacies, problems and
other social facets which preclude the behavioural implementation of social, economic and legal equality of women.

Notwithstanding these concerted efforts as well as various enactments which have tried to bring certain degree of emancipation of Indian women in legal sense, the legal position, however is far from being satisfactory. Women are not enjoying these rights and suffer from a number of socially inexorable disabilities and inhibitions. The position of women in rural areas is even worse. They usually do not exercise their rights owing mainly to ignorance and are, therefore, unable to achieve the legal equality with men. The other factor which precludes exercise by women of their rights is the nature of social structure. The social norms and values which govern human behaviour in rural areas do not favour women using their rights and thus create obstacles towards the enforcement of legislations which aim at improving the status of women.

The divergence between the paper formulae and social realities calls for a thorough study of the actual social effects of the laws in action as it is necessary for a definite exploration of social needs and societal consensus by surveys conducted either by governmental agencies or enthusiastic researchers. Scientific enquiries over the complexities of the 'living laws' result in the identification of inadequacies of the laws. Inspired by the interaction of the above thoughts the Researcher undertook the task of evaluating the working of the laws relating to Hindu women in practice.
The present study on law and status of women is an attempt to know how far the married Hindu women are aware of their rights, their attitude towards these legislations and in practice to what extent these laws are used either in their homes, in relatives' families, or in friends' families and how far the present laws have been able to put Hindu women at par with men.

Legislative activity directed towards bringing about social change in Modern India covers many and diverse spheres. Since it is not possible to consider all or most of these, the present study has necessarily been confined to some selected fields which form the core of social legislation related to women in India. The areas and topics so chosen for consideration are girl's age at marriage, monogamous marriage, inter-caste marriage, matrimonial relief, female child adoption, widow remarriage, dowry, property rights of women, suppression of immoral traffic, medical termination of pregnancy and female child discrimination.

It is felt that the relationships of awareness, attitude and practice provide new dimensions of study in communication which vitally contribute to the desired and planned changes in the existing social structure. The present investigation is exploratory in nature and aims at examining the changing status of Hindu women in the context of the existing legislations.
Objectives of the study

Based on the aforementioned observations, the following specific objectives of the study have been drawn:

1. To estimate the Socio-Economic Status (SES) of the elite and poor women of urban and rural areas.

2. To examine the awareness, attitude, practice and effectiveness of the legal rights of women in respect to girl's age at marriage, monogamous marriage, inter-caste marriage, matrimonial relief, female child adoption, widow remarriage, dowry, property rights of women, suppression of immoral traffic, medical termination of pregnancy and female child discrimination.

3. To examine and evaluate the relationship between awareness, attitude and practice of legal rights of women.

4. To examine and study the effect of mass media on the status of women.

5. To appraise the self-esteem of women and its influence on their status.

6. To examine and assess the life satisfaction and perceived status of the women within the home and in the community.

7. To analyse and study the association between background variables and the awareness, attitude, practice of legal rights, and with the status of women.
8. To analyse and understand the relationship between the predictor variables namely SES, exposure to media, self-esteem, decision-making power, restrictions on women's activities, life satisfaction and contribution of legal rights with the response variable, status of women.

9. To test the difference between the elite and poor women of urban and rural areas with regard to the selected variables of awareness, attitude and practice of legal rights and the status of women.

10. To identify the lacuna as perceived by the law practitioners in the existing legal rights of women.

11. To examine the impact of legal rights on the status of elite and poor women in urban and rural areas and suggest measures for improving the status of women.

In order to conduct the study in the light of the aforementioned objectives, the following Hypotheses have been formulated:

Hypotheses

1. Awareness of legal rights would depend on the Socio-Economic Status (SES) of the women. The higher the SES the greater will be the awareness, positive attitude and practice of the legal rights of women.

2. Awareness, attitude and practice of legal rights would very much depend on rural-urban residence.
3. In general, all the women are expected to have favourable attitude towards their legal rights.

4. There would be intrinsic relationship between the awareness, attitude and practice of legal rights of women.

5. There would be intrinsic relationship between the knowledge of women's legal rights and their self-perceived status. Greater knowledge of legal rights among women would empower them to make use of their rights and thereby enhance their status.

6. The overall status of women would very much depend upon the predictor variables SES, exposure to media, knowledge in legal rights, self-esteem, decision-making power, restrictions on women's activities and self-perceived status of women.

Limitations of the study

1. The present study was confined to only Hindu women and it excluded the other religious groups.

2. The study was restricted to one region (Tirupathi and its surrounding villages) and hence, could not be generalised and applied to whole of the country.

Chapterisation

The entire study is divided into five chapters. The first chapter contains introduction to the problem, conceptualisation, scope and objectives and limitations of the study. Second chapter presents review
of literature which includes a brief history of the Indian women through the ages, legislations relating to women and empirical studies related to the present study. Third Chapter discusses methodology viz., study area, sampling, research tools and method of data collection, measures of the variables and treatment of the data. Fourth Chapter deals with the results and discussion which are presented under the following sections: (a) Socio-Economic Status of the women respondents, (b) Awareness, attitudes and practice of legislation pertaining to women, (c) Exposure to mass media, (d) Self-esteem, (e) Perceived status of women within the home, (f) Predictor Variables and Status of women, and (g) Implications of the results for extension education and Social Policy. Fifth Chapter comprises summary and conclusions of the major findings, and suggestions for future research.
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</tbody>
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*Note: The 1991 Census has not been held in Jammu & Kashmir. Total, rural and urban population include projections for Jammu & Kashmir as on 01.03.1991, made by the Standing Committee of Experts on population projections (October 1989). The projected population figures exclude population of area under unlawful occupation of Pakistan and China where census could not be taken. Literates do not include figures for Jammu & Kashmir where the 1991 census has not been held.