CHAPTER I

INTRODUCTION

HISTORICAL POSITION OF WOMEN
IN THE DOMAIN OF LAW
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OBJECTIVES:

The main objective in undertaking this research is to throw light at the place of women in the entire scheme of universal atmosphere by delving deep into the ocean of scriptures history and the entire universal structure.

Law, though apparently is a branch of many sciences and philosophies, this branch has also a special touch of universality regulating the entire conduct of human life. In its narrow sense, Law may deal with day to day civic life, but in its comprehensive sense it has very much to do with the entire gamut of human civilization.

There is common but a mistake belief that women generally occupy a secondary position in the Indian culture and philosophy. However, if we just have a superficial look in some of the pages of our history India has produced great women seers and philosophers like Garegyi and Maitreyi whose deep knowledge in its most comprehensive
connotation was beyond doubt. They not only possessed knowledge about Secular things and matters but human life and the very purpose of our entire existences. They were as though were the incarnation of the spirit of the goddess of creation known as Mahakali, Mahalaxmi and Mahasarswati. The very fact that, we were worshippers of the goddess of universe itself shows the very high culture from which we perceived the female being.

Our ancient seers had described the all pervading and pure power and prowess of the entire female being in a memorable verse in the following words: -

यत्र नार्यस्तू पुज्यन्ते, रमन्ते तत्र देवता : !

(Gods and goddess dwelling where women are worshiped)

This, the very source of universal existence admittedly being vested in female being. It logically follows that, this strength is to be more precise in a Sanskrit word “SHAKTI” which is exhibited in various forms of secular and other objects.

It is pleasant paradox that the very source human existence should be subjected
to human laws in our day-to-day life. But even in that sphere, the softer sex has played a distinct role and has made immense contribution even with regards to worthy matters and administration of authority. It will not be an exaggeration to say that women have played significant role in law givers and low makers. They have ruled as queens and have also laid down certain rules and regulations by way of religious dicta. The celebrated seers like Gargeya and Maitreya have not only laid down spiritual dictums but have also acted as judges in between two philosophers advancing contradictory religious theories and philosophers. In an intellectual wrestling (if it can be so called) between Shankaracharya and Mandan Mishra one of them at least played the role of an umpire as through and one imagine the inherent structure of this women bestowed with such a great and rare honour.

Even if we come to a relatively modern period (from the mystical era) we find able women like Ahilyabi Holkar wearing a royal rob and administering Justice and conducting
other royal affairs. Such examples though rare are not less in number. It was Jijabai not only inspired Shri Chhatrapati Shivaji to fight for freedom, but also guided and actively participated though indirectly in the conduct of Shri Chhatrapati's administration.

Even recently Rani Laxmibai and Rani Durgavati have also valiantly and brilliantly conducted themselves in the military as well as civil affairs with equal strength. They placed the double role of law makers and law givers. They were a law unto themselves in an elevated and noble sense on social front Savitribai Phule his maiden march. Not only in war, in administration of justice and other fields but in the field of preaching and establishing peace and coexistence all over the world women have played a very significant role. By a happy coincidence it was India's Mrs. Vijayalaxmi Pandit who was the first president of the UNO general assembly formed after the devastating Second World War.

Till, today there are many women legislators, Prime Ministers, Chief Ministers
and other dignitaries occupied position all over the world. Mrs. Sarojini Naidu, Vijaya Raje Shinde, Mrs. Indira Gandhi are some such glorious example. Women have also played important role as distinguished judges in High Courts and Supreme Court Mrs. Sujata Mahohar, Mrs. Fatima can be cited as such examples. Kiran Bedi is an ideal example for those specially who are the inspired women officers for and others in general. She has created heaven in prison. She is the first women officer, who win the Maggassys Award.

The object of this thesis is ultimately to present a synthesis of all these conflicting struggles and attempts made by the softer sex to enrich the treasure of civilization culture and almost all spheres of human life with particular reference to the branch of law in its widest connotation. This is ultimately with a view to remove an inferiority complex amongst the female community all over in our country, whose voice has been suppressed in a medial period due to some volcanic political events in some parts of the world. However
because of the amidst attempt of women education by Maharshi Dhondo Keshav Karve and other social activist female get education platform and learn and express them self. It is also aimed at presenting a full picture of the contribution and position of women in the domain of law with a view to cut to size the superiority complex amongst some despotic thinkers obvious of the latent and patent abilities of the female sex.

**HYPOTHESIS:**

A brief account of position of women in olden days shows that, women have achieved highest echelon in all spheres of life. The question is, whether they achieved such position due to glorious Indian culture or with the help of their instinct traits. It is said that, the civilization of the country is known by the attitude of the society towards women. How the society looks at the women.

Of late, status of women is burning issue. At a glance one can see that, numbers of legislations are passed to uplift the position of women as to achieve their equal status with men. Whether the legal provisions reflects as

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social reality. The answer is there is a paradox in female laws and social reality. Instead of discussing this aspect at length at this juncture, I think it proper to understand the basic legal provisions relating to women.

**Constitution of India:**

Art 14 of the constitution of Indian envisaged the basic rote in which further voyage of equality proceeds; Art 14 of the Indian constitution contemplates.

"The State shall not deny to any person equality before law or the equal protection of the laws within the territory of Indian."

Art 15 of the constitution of India has shown the specific path on which the principles of equality must be followed. Art 15 runs as follows “the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”

As such there is a legal prohibition to discriminate between men & women only on account of their sex. Art 16 provides for equality of opportunity in matters of public employment. Art 16 (4) give ample powers to
state to make any special provision for reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of state is not adequately represented in the services under the state.

Art – 21 of the constitution of India contemplates, "No person shall be deprived of his life or personal liberty except according to procedure established by law".

Of late, our Hon’ble Supreme Court & Hon’ble High Court are giving multifaceted shape to this article as to encompass the widest meaning of Art 21 as right to live which includes right to have medical aid, right to education, right to gender equality.

In its recent judgment¹ their Lordships Dr. A.S. Anand & V.N.Khare, while dealing with the Art 21 & 14 constitution of Indian held that.

Each incident of sexual harassment at the place of work results in violation of fundamental right to gender equality and the right to life & liberty. The two most precious fundamental rights guaranteed are of

¹AIR 1999 SC 625
sufficient amplitude to encompass all facets of gender equalities including prevention of sexual harassment and abuse. Their Lordships further held.

The sexual harassment of female at the place of work is incompatible with the dignity & honor of a female and needs to be eliminated and there can be no compromise with such violation admits of no debate.

The principles laid down by their Lordships clearly indicate the position of women in domain of law.

Apart from constitutional enshrined provisions, many references can be given of the ordinary legislations relating to women. For example 598A, 304B, 376 A, B, C, 494 of IPC.

Amongst all these provisions sections 498A IPC has become more debatable in regard to its bias use by the female.

However, in view of decision of our Bombay High Court in Balkrishna Moghe\(^2\) case reported, Their Lordships Justice

\(^2\)1998 (3) MLJ 331
A.V.Sawant & J. Chandrashekhar Das held that,

"Section 498A is valid piece of legislation having regard to the social evil that was sought to be remedial, classification of the husband and his relatives as a separate class under section 498A of IPC is not discriminatory and there is no violation of the guarantee enshrined under Art 14 of constitution.

Further while giving its finding on the definition of cruelty. There is valid nexus between section 498A & the object sought to be achieved".

The Hon’ble Bombay High Court & the Hon’ble Supreme Court have thus considered the status of women in domain of law.

The innovative amendment like in section 114 A of Indian Evidence Act in regard to presumption as to absence of consent in certain prosecutions for rape has been added in Indian evidence Act.

As such, one can site number of illustrations as to show how the legislature,
executive & judiciary have acknowledge the position of women in domain of law.

One more example I would like to refer here which though is last but not the least, is the recent amendment of Maharastra State in Section 29 of Hindu Succession Act\textsuperscript{3} which was incorporated in Hindu Succession Act on 22 June 1994 as Section 29 A, 29 B & 29 C.

By way of this Maharastra Amendment, the daughter are made coparcener as like male in regard to all the rights & obligations which a male coparcener have under the Hindu law. The said Maharastra Amendment has made classification between the female those married before 22 June 1994 & female married or going to be married after 22 June 1994.

This piece of legislation has brought the female at per with male in some proprietary rights. These provisions confer on the daughter a status of a coparcener. The object and reasons for passing this Act state, the constitutional mandate of equality between men and women the pernicious system of

\textsuperscript{3} Mayne's Hindu Law 19\textsuperscript{th} edition
dowry existing due to the existence of coparenercy system and to remove the inequality and to destroy the breeding around of dowry. These provisions have the effect of conquering the exclusive and last vestige of a citadel of the males by females (though not all) and demolishing the monopoly of the males to own joint Hindu family property by capturing a seat for themselves equal to and along with their male associates. The ancient age monopoly has been broken & given a pride of place along with her father & brother & other male members of the coparcenary. Thus constitutional mandate of equality of sex is carried out by this legislative stroke, which demonstrates place & position of women in domain law.

All these legislations no doubt give protection to women world. But the question is, whether these legislations could control the burning issue of the female world in regard to their status.

By this thesis, I wish to analysis the position of women as "SHAKTI" as it was in golden ancient days and the identity crisis of
the women now a days with special reference to their legal rights by virtue of various innovative legislations favouring women, as an attempt to make them on par with men. By this research, I also wish to conclude that position of women is the inseparable part of the society & consequently of law. Therefore, position of women is interwoven in the domain of law.

Law is nothing but a moral and legal sanction of the society for the purpose of generating security and discipline amongst people. I wish to conclude that, in those days moral rules (unwritten) were so strong, so women could show their position in the administration of law, irrespective of their education and written rules.

However, in the present days due to changed scenario of society, more and more women legislations are made as to provide them this armor for protecting and exhibiting their position from all the devices of society. And thus, the position of women in domain of law with special reference to Indian culture is as significant as it was in ancient days and
their position is quite different that than of men.

The Judicial voyage shows that, the Hon’ble Supreme Court has recognized the Hon’ble and special status of women in society. Consequently to consider that delicate and vital position of women in the society, Law makers have given special considerations to women legislations which is the utmost need of the society as to show the graphic civilization of the Indian Society with the help of law. So, I wish to show by this thesis whether position of women can be assessed and uplifted successfully with the help of law much less in the domain of law. And I feel it was up grated it will be through divine law.