I. INTRODUCTION

Constitution of India is the corner stone of the legal edifice of the nation. Part III of the Constitution abolishes inequality between man and woman in many matters. There are also some special provisions for the benefit of women. The Directive Principles of the State policy also provide special protection to women-workers under Articles 39 and 42 of the Constitution. A number of other welfare legislations have also been passed to ameliorate the condition and status of women in the society. These Constitutional provisions and legislations have helped them to some extent to accord a better place in the society. But it is unfortunate that the Indian woman is still unfree, exploited, many times sold as commodity, liquidated without the law and held hostage by an exploitative combination.

Robert Ingersoll rightly pointed out:

There will never be a generation of great men until there has been a generation of free women—of free mothers.

'Half of Population' or better half of man in whatever manner one may think—women have always formed a very fascinating subject for social study. 1

The committee on the status of women in its report rightly pointed out:

Even though women constitute nearly half of the population, they have all the characteristics of a minority, viz. Inequality of class (economic situation) status (social position) and political power.²

Inequality is a common feature among human beings.³ But some of the inequalities are artificial and based on sex, race, descent or holding of property etc. After independence, a number of legislation have been passed to remove the inequalities based on sex in the society. Neither the enactment of law by itself can help those who are oppressed—whether they are women or any other social group nor it can be a pace setter for their economic and social development unless they understand it. Ignorance in the biggest enemy of mankind. Eighty percent of our population lives in the villages. The ignorance, poverty, backwardness and other social evils are rampant in the society. After independence efforts have been made by the Government to upgrade the status of women, but inequality and indignity vis-a-vis Indian womanhood are writ so large as to mar the veracity of fundamental rights and matrimonial remedies.

Article 44 of the Constitution provides that the state shall endeavour to "secure for the citizens a uniform civil

code through out the territory of India", but it is still dream. India being a secular state, every one has a freedom to profess a religion of one's choice. In most of the religious communities, the matters relating to family affairs, succession, inheritance etc. are decided in accordance with the personal laws applicable to them. Thus, due to multiplicity of laws, the problems of women are solved according to the personal laws to which they are subjected to. So, women have different rights and they enjoy different position and status under different personal laws.

Change is the law of nature. No society remains static and dormant. The status, position, rights, obligations and the social structure keep on changing with the changes in the society and other social units. Thus, the position and status of women of different religious communities has also kept on changing in different eras due to multiplicity of factors.

The remedies for Restitution of Conjugal Rights, judicial separation, divorce etc. are available to both spouses under different personal laws. But it must be kept in mind that law is what law does. Life is the touchstone of law, not printed articles in the paramount charters. The availability of a right or remedy is not just sufficient for its use by particular groups of the society. For instance, law has abolished dowry but what is burning bride's lot? Equal wages for women is the law but socio-economic research tells the lawless tale of traumatic discrimination and privation. So, there is co-relation between the status of women and matrimonial remedies. The study of the relationship will help us in arriving at some conclusion to know the efficacy and use of the remedy for Restitution of Conjugal Rights. As the women
of different religious communities enjoyed different status during different ages, their position and status are discussed separately.

II STATUS OF WOMEN UNDER HINDU LAW

The Hinduism has a very long history and many faces. During the centuries of its existence, it has seen many social and political changes. To know the exact status and position of Hindu women in a particular age, is a very difficult and complex problem. There are different streams of thought in the same age and divergent views have been expressed by different schools.

Accordingly to one school, woman is the best gift of god to man. She has been called 'Lakshmi' - the Goddess of wealth and prosperity. "The holiest object in the world is a virtuous woman, a tear of sorrow rolling down from her eyes melts the heart of even a mighty tyrant".4

According to the contrary view, of the best way to reach God is to avoid a woman. Sage Agastya says, as stated by Altekar, "Woman combines the fickleness of lightening, the sharpness of weapon and the swiftness of the Eagle."5 Shakespeare calls her, "frailty, thy name is woman". It is said that "Woman is the source of all evils, her love is to be dreaded more than the hatred of man, the poor young men who seek women in matrimony are like fishes who go to meet the

The status of Hindu women has been changing through ages. Thus, the status and position of the Hindu women through ages are discussed separately.

(A) Status in Vedic Period

A woman in the Vedic period enjoyed a higher status. She was the centre of domestic world and its empress. Even during the Vedic age the birth of a son was considered to be auspicious. In Atharvaveda prayers are made for the birth of a son. It says:

"The birth of a girl grant it elsewhere, here grant a boy."7 A Girl's birth is even deprecated in the Atharvaveda.8 However, daughters are lovingly treated by mothers and shielded by fathers and brothers. perpetual tutelage of woman is of later origin.9

The Vedic society was also patriarchal and masculine and in the house hold affairs muscular strength of man established permanent superiority over woman.10 But in spite of all this she enjoyed the position of honour in society. Aryans of Rigveda were very much fond of game of dice. Certain verses of

Vedas show that wives were panned in the game of dice. In one verse it is said:

"She never vexed me nor was angry with me. For the dice sake, whose single point n final, mine own devoted wife I alienated."\(^{11}\)

A wife was a sincere friend, partner and a guide of her husband. She had freedom of movement and could attend fairs, sabhas, festivals and assembly of learned persons.

Marriage was considered essential for performance of Dharma and the prorogation of race, the fulfillment of both of which required communication with and co-operation from the wife. So the religious duties to the Gods could be discharged only with the co-operation of wife. It is said in Rigveda:

"O Gods, with constant draught of milk husband and wife with one accord press out and wash the samajuice"\(^ {12}\)

No one could reach heaven without being accompanied by his or her duly married spouse. An ideal wife suffered all kinds of adversities to show loyalty to her husband. As 'Ardhangini' she was her husband's partner in Dharma, Artha and karma. A woman in mother's role has also been elevated to a very high place. The Mahabharta also says that mother excels in her greatness ten fathers and even the whole earth.\(^ {13}\) The statement of Draupadi in Mahabharta shows the devotion of a

\(^{11}\) Rigveda, X.34, 11.

\(^{12}\) Rigveda VIII, 31.8.

\(^{13}\) P.V. Kane, History of Dharamshastra, p. 580/
wife towards husband. It runs:

"The husband is a woman's God; it is through her husband alone that a woman, obtains progeny, enjoys comforts and luxury, attains fame in this world and heaven in the next. She serves her husband and performs vratas for his welfare. she gives up cosmetics when her husband is away".14

We also find references of widow remarriage. The practice of 'Sati' was not there. In Rigveda, the widow who lie by the side of her dead husband was raised by other relations. it is clear from the following verse:

"Rise, come into the world of life O Woman! Come, he is lifeless by whose side though liest. Wifehood with this, thy husband was thy position who took thy hand and wooed thee as a lover.15"

A widow had the same legal status as was enjoyed by a wife. The women enjoyed respect and honour during vedic-age.

(B) Status in Post Vedic Period

In the post vedic period the status of women was lowered down considerably. She was regarded as subservient to man and confined to house hold chores and child bearing. The position of a daughter deteriorated and various ceremonies were performed to avoid the birth of daughters. The following lines depicts the position of a daughter:

"A wife is comrade, a daughter, is misery,

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15. Rigveda, X, 38.8
and a son, a light in the highest heaven."\textsuperscript{16}

Even the age of marriage was lowered down. Even Gautm favours the early marriage of daughters in the following words:

"A girl should be given in marriage before she attains puberty. He who neglects it, commits sin. Some declare that a girl should be given in marriage before she wears clothes."\textsuperscript{17}

Vasistha expresses his views as under:

"Out of fear of the appearance of the menses, let the father marry his daughter while she runs naked. For if she stay after the age of puberty, sin falls on the father are guilty of the crime slaying an embryo."\textsuperscript{18}

The female education was not on encouraging path. There were many restrictions on the free movements of daughters. Virginity was regarded as a badge of respectability. It came to be encouraged as a sign of the elite and an index to high caste.

The position of wife deteriorated considerably during this period. The religious rights and privileges of the average wife were curtailed to a greater extent. A female was not considered worthy of performing all the samskaras, and the only samskara to be performed in her case was marriage.

\textsuperscript{17} Gautma Samhita, II, 9.24.
\textsuperscript{18} Vasistha Samhita, XVII, 70-71.
Marriage, being the only samskara, a woman could go through, it was natural to give importance to it in her life. Gautama depicts the position of a wife in the following words:

"A wife is not independent with respect to the fulfilment of the sacred law. Let her not violate her duty towards her husband. Let her restrain her tongue, eyes and action."¹⁹

Even the Ramayana, full of noble ideals does not entertain very high regard for the women. "They are said to be as whimsical as the leaves of a lotus flower, as sharp as the edges of a sword and as unsettled as the blast of a storm".²⁰

The same views have been expressed in later epic literature. It is said: "The faces of women are like flowers, their words are like the drops of honey and their hearts are like sharp razors, the interior of them no one can know".²¹

The same has been repeated in another place wherein women are compared to tigers "merciless, Cruel and degenerate".²²

There appears to be a paradoxical position regarding the status as depicted in Manu Smriti. At some places Manu is very harsh towards women and at other places women have been idealized. Manu says:

"Where women are honoured, there the gods are pleased but where they are not honoured, no

21. Supra Note, 16, p. 29.
22. Bhagavata Shandha, VI-4 and IX-14-36.
sacred rite yields any reward".\textsuperscript{23}

Manu also says:

"That Brahma—the creator, having divided his own body into two became male by one half and female by the other half. So divided man and woman become a perfect person, only when again joined in wedlock. Then alone they can perform religious ceremonies effectively".\textsuperscript{24}

At other place, Manu states that:

"There is vital structural difference between man and woman and woman could not possess an independent status". During her whole life a woman should be an appendage to male. Father protects her during maidenhood, husband during Coverture and sons protects her during widowhood and thus, a woman is never free".\textsuperscript{25}

Manu forbids a married woman to offer an agnihotra, "for by offering burnt oblations, they sink into hell". Manu further says that, "there are no specific sacrifices for woman independently of the husband, nor vratas nor fasts without his consent". He imposes his new rule by exhorting Brahmanas not to attend feasts given on such occasions.\textsuperscript{26}

\textsuperscript{23} Manu Smriti, III.56.
\textsuperscript{24} Manu Smriti, I.32.
\textsuperscript{25} Manu Smriti, VI.148.
\textsuperscript{26} Manu Smriti, IX.18.
Manu expected too much from a virtuous wife. Manu says:

"Even if the husband is Immoral, a debauch and lacks good qualities, the wife must still worship him as if he were god to herself". "A woman need not perform any Yajna or ceremony or undertake fast for her salvation. She will attain better life by service to her husband".27

Manu Further says:

"Even in the home nothing should be done by a child, a young or even old wife independently".28

In order to justify the lower status Manu highlights her sexual appetite. It is said:

"Woman must particularly be guarded against evil inclinations, however trifling they may appear to be, for, if they are not guarded, they will bring sorrow on both the families."

Manu expresses doubts about her fidelity:

"Women do not care for beauty, nor is their attention fixed on age; they give themselves to the handsome as well ugly, just for the fact that he is a man".

Manu allotted to them anger, dishonesty, malice and bad conduct. Manu further says, "If she is chaste, it is because she has not found a proper man, place or opportunity".

27. Manu Smriti, V.154.

28. Manu Smriti, V.147; IX.11.
It is further depicted:

"It is the nature of woman to seduce man in this world. She is able to lead astray not only the ignorant but even a learned man and make him a slave of lust. It is hence that she is called pramada, a temptress".

"Woman was created for infatuating man and hence there is nothing more heinous than woman".

He further says, "A woman should never think of independence from the father, the husband or the sons because by so doing she will make both the families contemptible."

The dictum of Manu along with Tulsidas' well known stanza in which he groups woman with drums, moorons, shudras and cattle as objects fit to be beaten have influenced the attitude of Hindu masses toward women.

Some of the Epics and Puran writers also backed Manu:

"Love of scandal and the lust of sex the creator gave to woman. A man can never guard them by words, blows or punishments of various kinds for they are always unbridled. He who watches over them beats the air with her fists".

"Women deprived of sex grow old" "A man with a hundred tongues, even if he were to do nothing else but lecture upon the vilest


defects of woman would not finish them in a long life of hundred years".
"Through their passion for man, their unstable tempres and inherent heartlessness they become disloyal to their husbands however carefully they may be guarded, in this world".31

The harsh view expressed by Manu are strongly prejudiced by their indifference to the realities of life. Some thinkers as Varahamihara denounced these view in the sixth century A.D. He puts a question, who suffers more from the sex-urge, men who marry even in their old age or women who lead a chaste life even if widowed in the prime of their life? Who is more sincere in love, the man who contracts a second marriage just after the death of his first wife or the woman who follows her husband on his funeral pyre? The fact is, man treat marriage vows lightly while woman act upto them...It is (hence) the height of imprudence and ingratitude to say that women are fickle, frail and faithless".32

It is very shocking that flirtation on the part of man is not condemned but glorified. The woman, on the other hand, who is a pawn rather than an offender in this mischievous game, is held up as the embodiment of lust and depravity. Varahamihara says: "It is just like the audacity of thieves who first defraud a person and then cry, "stop, you thief!".33

The widow remarriage was stopped. The practice of 'Sati' revived. The social status of a widow was very low and she was considered to be unfortunate and widow remarriage was considered to be a taboo. So, denial of education to daughters, polygamy restrictions on movements and revival of 'Sati' were the main factors to lower down the status of women in the post Vedic period.

Describing the status of woman in post Vedic period an authority on the subject states:

"In India, subjection was a cardinal principle. Day and night must women be held by their protector in a state of dependence, says Manu (Hindu-law giver). The rule of inheritance was agnatic, that is descent traced through males to the exclusion of the females".34

(C) Status in Medieval Period

After post Vedic period there were number of foreign invasions. The whole of North India was under the rule of one or other foreign tribe who had domiciled in India. These foreign invasions influenced the culture, religion and the prevailing social environment. The social institutions broke down and the society suffered a cultural collapse resulting in degradation. women gradually lost their freedom and become dependent on men. The beautiful women and unmarried girls were forcefully taken and compelled to marry against their wishes.

To avoid such a situation, the daughters were given in

34. XX VIII Encyclopedia Britannica, 11th, Ed., p. 782.
marriage before attaining puberty. The child marriages become the popular feature of the social life. The social ideal of monogamy also contributed to development towards child marriages. With the passage of time, the child marriages became so popular that a departure from it was a matter of social disapproval and even social disgrace. The Hindu daughters were married before the age of nine or ten and even in some cases even before they had learnt to talk. Thus, the daughters were deprived of the opportunities of education.

Due to feeling of insecurity, the position of wife deteriorated considerably. Purdah system became rigid and a number of restrictions were imposed on the freedoms of wife. A wife had no say in household affairs. The legal position regarding inheritance of property was also unsatisfactory.

Though the doctrine of stridhan was liberally interpreted under some schools of Hindu law, yet women were generally excluded from succession to property and this led to their dependence on man.

In the southern part of India which was free from invasions, the women enjoyed better social status. The agonies of widows further increased during this period. The permission for widow remarriage was not granted. The 'Sati' practice became common and a widow had to lead a life of hardships and sufferings. In the beginning, the practice of 'Sati' was voluntary, but gradually a practice developed where she was compelled to perform the act against her wishes. Some Mughal

Emperors like Akbar, Jahangir, Aurangzeb etc. tried to ban the practice. Badauni wrote, "If a woman wished to be burnt with her husband, they should not prevent her, but she not be forced against her will". 37

Though the ideal of equality between man and woman was propagated by some saints, yet there was no significant achievement. Though equality was preached by them yet their attitude towards women was very conservative. They considered woman a great obstruction in the way of spiritual realization. Ekanatha wrote:

"An aspirant must therefore keep himself aloof from the influence of woman." 38 Tukaram also expressed the same view, "Give me not the company of women for by that I forget God's worship and my mind goes beyond my control." 39 Kabir called woman a hellish well. 40

They described the sexual aspect of male-female relationship, but sex is not the whole woman. Thus, woman were placed in the worst possible condition during this period.

(D) Status in British Period

During British period, a new type of economy, state structure and education system was introduced. Macaulay

39. Ibid.
introduced English education to enlighten the people and to give them proper place in the administrative setup. The knowledge of the English language increased the participation of local people in the administration and political life of the country. It also helped in the transformation of the social system which was responsible for the conditions of poverty prevailing in the society.

A social reformer, Raja Ram Mohan Roy, submitted a memorandum to governor General on 2 December, 1823, and pleaded for introduction of western education.

"As the sum set apart for the introduction of the natives of India was intended by the Government in England for the improvement of its India subject. I beg leave to state---that if the plan now adopted be followed, it will completely defeat the object proposed; since no improvement can be expected from inducing young men to consume a dozen of the most valuable years of their lives in acquiring the niceties of Vyakarana or Sanskrit Grammar. But as the improvement of the native population is the object of the Government, it will consequently promote a more liberal and enlightened system of instruction; embracing Mathematics, Natural Philosophy, Chemistry, Anatomy with other useful sciences which may be accompanied with the sum proposed by employing a few gentlemen of talents and learning, educated in Europe, and providing a college furnished with necessary books, instruments and other apparatus".41

The impact of English education and Christianity propagated by missionaries brought out social changes through social movements and religious reforms.

Eminent leader, Shri Gopal Krishna Gokhle described the change in the following words:

"The first impact of western teaching on those who received it was to incline them strongly in favour of the western way of looking at things and under this influence they bent their energies, in the first instance, to the re-examination of the whole of their ancient civilization or their social usages and institutions, their religious beliefs, their literature, their science, their art. In fact, their conception and realization of life". 42

The social reformer, Raja Ram Mohan Roy did his best for the feminist cause. He raised his voice against social evils like practice of 'Sati'. Due to the efforts of Raja Ram Mohan Roy, a social organisation, 'Brahmo Samaj' was founded. The Samaj tried its best to remove social evils like child marriage, seclusion of women, limited inheritance rights and polygamy etc. It pleaded for women education to improve their social status. Due to sincere efforts of Raja Ram Mohan Roy and other 'Anti-Sati Regulation' was passed by Lord William Bentick. The orthodox Section of the Hindu community raised their eyebrows and petitioned to the Privy council for the repeal of this Act on the ground that it was against the ideals and norms of Hindu society. Raja Ram Mohan Roy pleaded

successfully against the petition in the following words:

"Your petitioners can not permit themselves to suffer that such a practice, abhorrent to all the feelings of nature, the obligations of society, and the principles of good government, will receive the sanction of your honourable house, much less that, having been abolished, the British name and character will be dishonored by its re-establishment".

The Privy Council endorsed Bentick's Anti-Sati Bill. The other social organisation, Prarthana Samaj also done a lot to ameliorate the status of women under the leadership of Keshab Chandra Sen.

The passing of the Prevention of Sati Act posed a new problem for the young widows. She had to face a miserable and inhuman existence. Through the efforts of Ishwar Chandra Vidyasagar, the Hindu Widow Remarriage Act, 1856, was passed.

The Samaj also encouraged inter-caste marriages. When legality of such a marriage was challenged by orthodox Hindus, it resulted in the passing of The Native Marriage Act, 1872. The act permitted inter-caste marriage and divorce and prohibited polygamy. It is said:

"The Act facilitated the social reforms advocated by Keshab Chandra Sen, particularly the abolition of caste distinction". 43

43. R.C. Majumdar, British Paramountency, And India Renaissance, p. 104.
A movement for women education was also initiated by various social organizations. Lord Dalhousie lent Government patronage to such movement. Neera Desai points out:

"It is the opinion of the Governor-General in Council that no single change in the habit of the people is likely to lead to more important and beneficial consequences than the introduction of education for their female children."\(^4^4\)

The Prarthana Samaj under the leadership of Ranade put forward the idea of a National Social conference. Ranade put the objective of the conference in general terms:

"The issue is not this or that particular reform about which people have so much controversy, but the general spirit of parity, justice, equality. Temperance and mercy which should be infused into our minds and which should illuminate our hearts."\(^4^5\)

Ranade acted as the spokesman of the educated people and moderate reformers and strengthened the hands of the government in passing the Age of Consent Bill in 1891.

The other social organisation, 'Arya Samaj' was founded in 1875. Swami Dayanand emphasised compulsory education both for men and women and spoke against purdah system. He tried to raise the status of women in several ways.

The foundation of India National Congress in 1885, also

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44. Supra Note, 40, pp. 205-206.
45. Ibid, p. 80.
draw a certain number of women into the vortex of country's political life. The transformation of attitude towards women was actually precipitated by Gandhiji's view regarding women's role in social revolution and reconstruction. According to him, "Man and woman are of equal rank, but they are not identical." It was realized that nothing remarkable could be achieved unless and until the child marriages were prohibited. So, to prohibit child marriages, the Child Marriage Restraint Act, 1929, was passed. The Female Infanticide Protection Act, 1870, was also passed during the period British Administration.

The position of wives improved considerably during this period. The Hindu Women's Right to Separate Residence and Maintenance Act, 1946, was passed. Under the provisions of this act, a wife could live separately from her husband and could claim separate residence and maintenance without having Judicial separation. The Bombay Prevention of Bigamous Marriage Act, 1946, and the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949, were other enactments which helped in improving the position of women to some extent.

The passing of the Hindu Widow Remarriage Act, 1856, legalized widow remarriages, but they were still devoid of property right. To improve their position, the Hindu Women's Right To Property Act, 1937, was passed. Though a widow was not made absolute owner of the property of her deceased husband and the Act only entitled the enjoyment of the property, yet it helped in improving her position. Now she was not at the mercy of the other members of her late husband's family. So the position of women improved considerably during the British period.
(E) Status in Modern Period

After independence, the principle of equality was incorporated in the objective resolution of free India in 1947 and was later enshrined in the Constitution of India. The fundamental rights guaranteed under the Constitution are equally available to males and females. Some special provisions have been made for the benefits of women. The Directive Principles of the state policy also enumerate certain directives to ameliorate the position of women. A number of legislations have also been passed in this regard.

Before the passing of major Hindu legislations in 1955-56, women suffered from many disabilities. She could take only a limited interest in the divided property of a deceased Hindu. She was not entitled to be a Coparcener she was not legally competent to adopt. The husband had absolute powers of adoption. A mother could be the guardian of her minor child after the death of her husband but she could be deprived of this right by the testamentary appointment of her husband. She had no power to appoint a testamentary guardian. A widow could adopt a child but the adoption was related back to her husband. An illegitimate daughter could not claim maintenance from the putative father. After independence efforts have been made to remove these disabilities through legislations.

The Hindu Succession Act, 1956, has statutorily recognized the property right of a Hindu daughter. The Act purports to determine the heirs on secular list of consanguinity and affinity without any discrimination of the ground of sex. Proviso to Section 6 of the Act, places the
daughter at par with the son. It confers on the daughter, a right to inherit the undivided interest of her father in the joint family property, along with other heirs specified in class I of the schedule. The daughter, the widow and the mother now inherit property along with the son and take an equal share with him.

(i) Position of wife

In the modern period a wife enjoys a comparatively better position. All the fields of life are open for her and employment of women is generally encouraged. However, some intellectuals and leaders are still dominated by the traditional ideas. Late B.G. Kher addressed the Bombay Legislative in these words:

"To my mind, the ordering of home, the bringing up of children, the bringing to the home the best possible help which modern achievements can provide, require not merely the greatest intellectual effort but the most sustained effort of service, that infinite capacity for taking pains which amounts to genius. These are spheres where woman excels. She is peculiarly fitted for this task, although I hold the view that occupations like cooking and domestic arrangements should also be undertaken by men in order to convince women that we do not attach any stigma or inferiority to these occupations."

In a convocation address late Dr. Rajendra Prasad also said:

"He considered the work within the sphere of family to be

46. supra Note, 38, pp. 265-66.
more important than in the offices and factories and this work could be done only by women.......The supreme freedom for a woman meant that she should undertake full responsibility to mould the physical, moral and mental character of new generation". Raja Gopalachari even said, "Looking after home may be women best career." 47

A number of legislation have been passed to provide certain rights which were not available to the wife. It is the personal obligation of the husband to provide maintenance to the wife. She has right to claim separate residence and maintenance under Section 18(2) of The Hindu Adoption and Maintenance Act, 1956. Before, the passing of The Hindu Adoption and Maintenance Act, 1956, a child could be adopted by a male without the consent of his wife. But, under Section 7 of the said Act, a married male can't adopt without the consent of his wife. The consent can be dispensed with only in specific circumstance. According to Section 8 of the Act, a wife can also adopt a child if her husband has ceased to be Hindu or has completely and finally renounced the world or has been declared of unsound mind. The father can't give the child in adoption with the consent of mother of the child. The mother of an illegitimate child has absolute authority to give the child in adoption.

Under Section 13 of The Hindu Marriage Act, 1955 fault grounds of divorce are available both to the husband and wife. The wife has also special grounds of divorce under Section 13(2) of the Hindu Marriage Act, 1955.

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47. Ibid.
Section 14(1) of The Hindu Succession Act, 1936 has made her the absolute owner of the property which she possessed before or acquired after coming into force of the Act in any manner.

Under Section 6 of the Hindu Minority and Guardianship Act, she is the natural guardian of her minor children after their father. After the death of her husband, she can't be deprived of guardianship by the testamentary appointment of her husband.

(ii) Position of Widow

The position of widow is also satisfactory. A widow is free to remarry. Before the passing of the Hindu Succession Act, 1956, a widow had only limited right to enjoy the property during her life time. Now Section 14 of The Hindu Succession Act, 1956, has made her the absolute owner of the property which was possessed by her at the time of passing of the act. The remarriage of a widow does not divest her of the property inherited from her late husband. Under Section 6 of this Act, she is placed under the category of class I heirs of the schedule. She is entitled to inherit the coparcenary interest of her late husband along with sons and daughters. Under the Hindu Adoption and Maintenance Act, 1956, a widow can adopt a son or a daughter in her own right. So, the four Acts passed in 1955-56 have considerably improved the status of women in the society. The general welfare legislations passed by the states have also contributed a lot in this regard.

But the women still suffer from disabilities and the
passing of the legislations not sufficient to ameliorate their status.

III STATUS OF WOMEN IN ISLAM

The position of women under Muslim law is far from satisfactory. It is the general belief that Muslim law is a revealed law and man and woman stand on equal footing in the eyes of Allah. A woman, like a man, has a right to pray to the Almighty and she can hope for redemption. Woman is not considered as an impediment in the path of religion, nor she is considered as the root cause of Man's downfall. A high status has been given to women in the Holy Quran. However, women are suffering from many disadvantages and are placed in inferior position due to wrongful interpretation of Koranic verses of the sayings of prophet.

(A) Status in Pre-Islamic Period

There is some controversy regarding the position of women in Pre-Islamic Period. In Arabia, the birthplace of Islam, the condition of women was extremely degraded. Among the Pagan Arabs, a woman was considered to be mere chattel. She enjoyed no legal rights in social and political life of the country. Some pre-Islamic proverbs which illustrates the status of a woman are:

"A man can bear anything but the mentions of his wives"
"Women are the whips of Satan"
"Our mother forbids us to err and run into error",
"Obedience to a woman will have to be repented off",
"Trust neither a king, a horse nor a woman"
"What a woman has to do with the council of a nation?". 48

Fyzee writes:

Muslim authors as a rule mention that the position of women at the time of the prophet was not better than that of animals. They had no legal rights, in youth they were the goods and chattels of the father; after marriage the husband became their lord and master. 49

According to Abdur Rahim polygamy was universal, divorce was easy and female infanticide was common. 50

But, there is other side of the story also. Some European scholars, who follow Goldziher and Sir Charles Lyall, are of the opinion that the position of Pre-Islamic Arabian woman was not bad. But it is a fact that before the advent of Prophet, the position of women was far from satisfactory. So, at this stage Holy Prophet appeared on the scene and advocated to ameliorate the conditions of women.

(B) Status in Islam

Various traditions from Prophet provide respectable status to women. The prophet is reported to have said; "The women ought to behave towards their husbands in like manner as

their husbands should behave towards them, according to what is just"

He also recommends 'care for and kindness towards women' in another tradition. A few more tradition in the same strain:

"The most perfect Muslim is he whose disposition is the best and the best of you is he who behaves best towards his wife.51

"Ye men have rights over your wives and your wives have rights over you.52

"When a man has two wives and does not treat them equally, he will come on the day of resurrection with half his body fallen off".53

It is the belief that a large portion of the Quran was revealed. It was complained by the believing women of Madina that whatever God revealed, the address was always to the believing men and believing women were hardly referred to. Soon after this complaining, the following verse (35:33) of the Quran was revealed by God:

"Verily the Muslim men and the Muslim women, the believing men and the believing women, the devout men and the devout women, the men of veracity and the women of veracity, the patient men and the patient women, the humble men and the humble women, the alms-giving men

51. Miskatu'I-Masabih:: Babu'n-Nakah.
52. Ibid.
and the alms-giving women, the men who fast and the women who fast, the chaste men and the castle women, and those of men and women who remember God frequently: For them, hath God prepared forgiveness and great reward." 54

The intention of the verse clearly indicates that both men and women are equal in the eyes of God. On the other hand, we find many traditions attributed to Prophet in which women have been placed in degraded position—one often quoted tradition is as under:

The messenger of God came out one day and said "O women folk! you should endorse (What I say) for I see most of your to be the inmates of hell".

They said:

"But for what reason, O messenger of God"

So, he said:

"You utter curses often and be ungrateful to your tribes. I do not consider more disastrous to the wisdom of a sagacious man than one of you women with your (innate) imperfections (deficiencies) in both your intelligence (Mental capacity) and faith".

The woman thereupon enquire "what are the deficiencies in our intelligence and our faith? O Messenger of God" and the Prophet replied:

"A Women's evidence is an indication to her defective

54. Zamakhshari, Tafsir al-Kashshaf, Ch. XXXV:XXXIII.
intelligence and her being not permitted to offer daily ritual prayers, and observe fasts during Ramadan. 55

All such traditions seem to be spurious. The verses are often mis-interpreted without keeping the social circumstances of the time into consideration. The Qur'an while discussing the moral and legal obligations of the relationship between the creditors and debtors and the putting down of the contract in writing says:

"But if he who oweth a debt be insane, weak or unable himself to dictate, then, let a guardian of his interest dictate in terms of equity. Call two witnesses, from amongst your men and if two men are not at hand, then, a man and two women of such as ye approve as witnesses. So that if one (of the women) err eth, the other will remember". 56

Referring to this verse it is said that women were assigned a lesser and inferior role as compared to men. But it should not be forgotten that the verse refers to the social conditions of time where women's understanding of financial, commercial and free relationship was not so sound as that of men.

Many other such traditions are also attributed to the Prophet. In one of them Prophet says: "Admonish your wives

55. Bukhari, Sahih, 6:6, 2:21; also see Nahju'I-Balagha (Egyptian edition with Muhammad (Abdoh's commentary nodate) Vol. 1, 140. The view of the tradition is expressed more poetically. Both then are difficult to believe as authentic.

with kindness, because woman was created from a crooked bone of the side, therefore if you wish to straighten it, you will break it and if you let it alone it will remain crooked.\textsuperscript{57}

A woman approaching from afore or from behind is a form of devil\textsuperscript{58}.

Women are the greatest Fitna\textsuperscript{59} (cause of trouble) and the Government of women does not render happy her people.\textsuperscript{60}.

The religious and social intellectual inferiority of women are also emphasized in some of the proverbs and some of them are highly derogatory. For example:

"The beauty of man is in his intelligence and the intelligence of a woman is in her beauty.\textsuperscript{61}"

"Women are defective in understanding and religion."\textsuperscript{62}

"The cunning of women is strong and that of the devil is weak". When a woman becomes old, nothing remains in her but poison and colour of sulphur."\textsuperscript{63}

\textsuperscript{57} Mishkat: Babu'n - Nikah.
\textsuperscript{58} Ibid.
\textsuperscript{59} Bukhari, Sahih, 67:17.
\textsuperscript{60} Bukhari, Sahih, 92:18.
\textsuperscript{62} Ibid., 325. See also the tradition quoted above.
\textsuperscript{63} Ibid.
However, despite all these traditions, women have been provided equal status in different aspects of life in the Quran. The various traditions have been attributed to the Prophet by various theologians to justify the lower social status given to the women during various periods of Islamic development.

Education was made compulsory to both the sexes by the Prophet.

The Messenger of Allah had said:

God curses those parents who evade their duties and neglect the education of their children (male and female). On the contrary, God blesses those parents who take to the path of Goodness, the path of well-being and good education for their children (male and female). Whoever searches after knowledge, it will be expiation for his past sins.64

Modesty, decorum and chastity were emphasized in the Quran. The women were advised not to display their ornaments of beauty. It is said:

"O Prophet: Tell thy wives and daughters and the believing women, that they should cast their outer garments over their persons; that is most convenient that they should be known (as such) and not molested."65


65. Ibid., p. 10
These Quaranic verses are misinterpreted by some jurists to justify the veiling and seclusion of women which prevails today, but these are not of Islamic origin.

The practice of female infanticide has been condemned in the Quaran in clear terms. The Quaran warns:

When the female (infant) buried alive is made to ask what crime she was killed (LXXXI): 8:9).

The attitude of such parents who wants only birth of sons and not daughters has also been strongly criticized. It says:

When news is brought to one of them of (the birth of) a female (child), his face darkens and he is filled with inward grief. With shame does he hide himself from his people because of the bad news, he says: shall he retain her on (sufferance) and contempt, or bury her in dust? Ah! what an evil (choice) to decide on? (XXVI: 58-59).66

Under Islam a daughter has right to claim justice and maintenance as a matter of right. She is also entitled to inherit her share as prescribed in the Holy Quaran. There can't be any discrimination on the basis of sex only. Allah has mentioned daughter as a "shield from the fire of Hell and "Mean for entry into the Heaven".67

But it is sorry to state that some of the theologians and jurists have produced what was in many respects, against the

66. Ibid., p. 11-12.
spirit of the Quaran. Commenting on the role of theologians and jurists, who have subordinated the position of women, Von Kremer has said"

The disgrace of having lowered the high position of women belongs, in the first instance, to the Morose, fanatical theologians of Islam. It was not due, to be sure, to the fact that they were indifferent or insensible to feminine charms—for they had their own well stocked harems—but outside that delightful little paradise, they loved to affect a thorough contempt for things earthly, and to express a pious horror of the sinfulness of the world and the levity of the fair sex.68

Thus, the Prophet placed women in a respectable position in Islam.

(C) Status of Women in Modern Period

However, it is a true fact that the Muslim women have suffered greatly due to unilateral power of divorce enjoyed by husbands. The traditions of Prophet disapproves an easy divorce. One of them says that most abominable thing in the eyes of God is divorce.69

An unbridled power of the male to divorce his wife without any reason or afterthought creates most pitiable

conditions for the divorcee and the children. Anderson observes:

'It is true that there are parts of Muslim world where divorce is commendably rare' but elsewhere it is appallingly common. The Muslim wife indeed has always lived under the ever present shadow of divorce, a shadow mitigated only in comparatively rare cases by certain precautionary devices - the unjustified repudiation of a wife is regarded by the Jurists, as a sin, but is none-the-less held to be legally effective.70

So, the prophet was not in favour of giving easy divorce by a husband. Both the male and female are placed on equal footings as far as their rights and responsibilities are concerned. Woman completes a man as a person and in turn is completed by him. Co-operation and harmony between husband and wife is the crux of life.

However, if we analyse the social situation, we find that a wife is completely subjected to the authority of a husband and has been given a lower status. Various factors are responsible for lowering the status of Muslim women in India.

(D) Factors Responsible for Lower Status of Women

Seclusion of women is one of the major factors. Due to Pardah system, majority of the Muslim women are devoid of education. Due to economic pursuits and modernisation, the Purdah system is giving way. But it still continues to be a

social reality and religious feelings are associated with it.

Unlike Hinduism, marriage is a contract and divorce is easily allowed. However, in marriage contract, male and female have unequal positions. Free consent of parties to the marriage is essential for its validity. However, if we look into actual practice the girls are given in marriage without obtaining their consent and it is a mere formality.

Under Muslim Law, Polygamy is permissible. A husband is entitled to have four wives at a time and has absolute powers of divorce. He can divorce his wife without any fault and even without mentioning any reason. Among the sunnies, who constitute the majority of Muslims in India, a divorce is effective when the husband pronounces triple Talak. A wife can seek divorce under the Muslim Marriage Dissolution Act, 1939, only on specified grounds. Due to frequent divorces, the status of women has been adversely affected.

Dower is meant to be a security for wife against the possibility of divorce at the instance of the husband. In India we find two type of trends, the first is, to fix it very high and the second, to fix it very low. The state legislations authorise the courts to reduce the amount of dower, if it is very high but there is no legislation which provides for increasing if it has been fixed very low.

However, we find that the majority of women are not able to get any benefit of dower in case of widowhood and divorce as marriage contracts are not in writing.

A mother is not entitled to guardianship of the property of a minor. The rules of inheritance also put the women in a
disadvantageous position. The share of a male heir of the same degree is twice that of a female.

Unlike other personal laws, a woman is entitled to get maintenance only during Idaat period. The Supreme Court in famous Shah Bano Case upheld the statutory right to maintenance of divorced Muslim Women under Section 125 of the Cr.P.C. The orthodox Section of Muslim community raised great hue and cry against the decision of the court. The necessary Muslim (Protection of Rights on Divorce) Act, 1986, was passed to pacify the orthodox section which is considered to be a retrogressive step.

Frequent Talaks, seclusion and polygamy have been most detrimental to the status of women in Islam and they are subjected to ill treatment. Allah admonishes man for improper treatment of his wives. Allah says:

"Ye will not be able to deal equally between (your) wives, however much Ye wish (to do so). But turn not altogether away (from one), leaving her as in suspense. If ye do good and keep away from evil, lo! Allah is ever Forgiving, Merciful".71

But we find that the situation is far from satisfactory and needs immediate reformation. Due to political reasons Government of India is hesitant to take any decision; because there is no demand from community. The Muslims in general and women in particular are suffering from innate complexes to permit them to come out of their grooves. Sir Syed mentioned before the education commission of 1882, four causes for the

71. The Quaran, 4:129.
By and large, the same causes still exist. Qurratulain Hyder (1975, p. 201) while discussing the situation of the Muslim women rightly pointed out that:

"Muslim women are as modern and as backward as their counterparts in the various income groups in other communities. The various economic and sociological problems of the Muslim community cannot be isolated from the problems of the general backwardness and poverty of the India masses".

To achieve equality and better status in society, women will have to come forward. They will have to overcome negative mentality and be self-reliant in different aspects of life. The Islamic Law, progressively construed, will meet the dynamic requirements of developing society. Many of the inequalities will vanish, if judges enter the spirit of age, share the vision of the prophet and blend the values of the Constitution.

IV STATUS OF WOMEN UNDER CHRISTIAN LAW

(A) Status under old law

Marriage was given high importance in life and society. So, women are placed in a comparative better position under Christian law. Equality, as a value, has been recognized and accepted under Christianity in unambiguous terms. This can be

72. Supra Note, 69.
traced to the epistle of Paul the Apostle in the Bible:

There is neither Jew nor Greek
There is neither bond nor free
There is neither male nor female,
For ye are all one in Christ Jesus. 73

In interpreting these words, the anticipatory theory holds that the verse anticipated a more explicitly stated ideal of social reform. 74

However, there is opposite view also. The myth of creation says that Eve was created after Adam to act as his companion and helpmate and thus puts a woman at a second place in domestic and social life. If we accept this view, she has to be subordinate first to her father and then to her husband. It is the general belief that it was Eve who tempted Adam to eat the forbidden fruit. This myth has put a permanent stamp over women as temptress and seducers and has given the husband the right to control the wife.

Woman was described by the early Church fathers (like St. Bernard, St. Banaventure, St. Cyprian, St. Jerome and St. Demaocene) as "the gateway to hell", "the origin of the Evil", "the mother of all evils", "a scorpion every ready to sting", "Lance of the damon", "daughter of falsehood", "Sentiment of Hell" and "the enemy of peace". They enjoined her to live in continual penance on account of the curses she has brought to

73. Holy Bible, Galations ch. 3.28.
It is the general belief that the wife belongs to the husband and a Christian husband is supposed to have a right over the ornaments and property received by her from her parents. The concept of fusion of personalities made her to suffer from many disabilities. Marriage was considered to be a sacramental affair but unlike Hinduism the main emphasis was on the establishment of mutual relationship between husband and wife and the spouses have duties towards each other. This idea is expressed in the following pronouncement which forms a part of marriage rites:

"Man shall leave his father and shall cleave to his wife; and they shall be one flesh." 

So the nucleus of family organisation is the mutual relationship of husband and wife, which accords a better status to the wife while in some other religions i.e. the Hinduism, marriage is considered as an alliance between two families and after marriage a girl is transferred from one family to the other family. But inspite of man dominated society and the concept of fusion of personalities, a woman

75. See A.R.I. Doi, Women in Sharia, 13 (Zaria, 1983). One of the most seathing of these attacks on women is that of Tertullian. Do you know that you are each an Eve? The sentence of God on this sex of your lives in this age. You are the evil's gateway; you are the unsealer of that (forbidden) tree; you are the first deserter of the Divine Law, you are she who persuades him whom devil was not valiant enough to attach you destroyed so easily God's Image, man. (David and Verma quoting Tertullian: Decultic Feminarium in Marriage- East and West at 69.

enjoyed better status under the old Christian law.

(B) Status Under Modern Christian Law

The change is the law of nature. With the passage of time changes are brought in the family structure and the society. The joint family system is breaking up due to so many factors. But joint family system is still prevalent to some extent in some communities of Indian Christians like groups of Syrians Christians of Kerala and Catholics of Mangalore, where daughter-in-law is not relegated to the background. She has freedom of movement and enjoys a better status than a daughter-in-law in patrilineal families of the uppercaste Hindus. In a joint family, the central authority is vested in the male, but the mutual responsibilities of husband and wife are also given due recognition.

Equality, as a value, has been accepted in Christianity due to westernisation and the influence of Christian missionaries. So, it is believed that inequality in laws applicable would be contrary to the scriptures and the ethos of Christianity.

Polygamy, unlike Islam, is forbidden in Christianity. Monogamy is the strict rule. It has helped to a greater extent in raising the status of women in Christianity. However, the sacramental character of marriage, where dissolution of marriage was not permissible and divorce found no place, had affected the status of wife both ways among Catholics and some other groups. Due to permanent character of marriage she has been provided security of home and there is no danger of her separation from children, but she has also been subjected to
the husband authority and is also deprived of her legal rights and independent existence.77

In Christianity, it is the general belief that both man and woman have been created by God in his own image, so, like a man, a woman is also entitled for salvation. She is a spiritually sovereign human being and right of salvation is not lost by her after marriage. A woman is entitled to study and learn religions. She has an individual moral independence and responsibility. In religious matters, Christianity recognises equality between man and woman. Inspite of all this, in church organizations women have never been given full ecclesiastic responsibility.

Marriage is not woman's sole destiny, although, it is most desirable. We do not find the practice of child marriages among Christian communities. Widowhood is not a curse. There is total absence of purdah. The participation of women in religious prayers, absence of purdah system, absence of rigid insistence on segregation of sexes, practice of monogamy, emphasis on husband-wife relationship in marriage, emphasis on Charity and service to others—all peculiar features of Christianity puts women in relatively better position.

The field of education and employment were open for Christian women in the later 19th and early 20th century.

Christian Missionaries also helped in establishing educational and vocational institutions for women. The women took full advantage of such institutions. The educated women

77. Ibid.
made best utilisation of their education by taking up jobs in various spheres of life.

During the period of British Administration special laws applicable to Christians were passed. Most of these laws conform to the egalitarian principle. Divorce was introduced and recognised under the Indian Divorce Act, 1869. But after independence, the position has changed due to historical reasons, administrative indifference and regressive judicial interpretations. The laws of British India have not been extended to all the territories. As a result the Christians in those territories are governed by their "personal laws". The discrimination against women arises because of the occasional deviation from the egalitarian principles in the substantive laws enacted by the British and more frequently because of the personal laws based on customs.78

V STATUS OF WOMEN UNDER PARSİ LAW

Parsis constitute a microscopic minority community in India. It is generally believed that Parsis migrated to India about 1300 years ago and adopted Gujarati as their language. Though they retained most of their customs and elements of their religion, yet indigenous population influenced them in various ways. During the period of British administration, they were the first to take to western style of life and English education. The substance of Zoroaster’s doctrine followed by them is found in Yas XXX.

The two primal spirits who revealed themselves in vision as twin are, the Better

and the Bad in thought, word and action. And between these two the wise knew to choose a right, the foolish not so.79

Zoroastrian lays great emphasis on Moral and Hope. The Zoroastrian faith not only gives its followers a moral rule through life, not only dictates his heart, his tongue, his hand, teaching him good thought, good words, and good deeds, but it tells him that good will prevail at last if he does his duty.

(A) Status During British Period

As the Parsi community was highly advanced, they gave much importance to their moral philosophy. The influence of socio-religious philosophy is discernible in the family matter of Paris. The women enjoyed an honourable status and position in the family and society. During the period of British Administration, the Hindus and Muslims were suffering from many social evils. Various social evils like Polygamy, child marriages etc. had crept in these communities. But Parsi Panchayat fought against such social evils. This helped in providing respectable position to women in the community. However, women were subjected to strict rules and regulations of observance. The moral codes were enforced strictly by the Parsi Panchayat. Women had to lead a very pure life. Extra-marital relations were highly condemned. The restrictions imposed on women also adversely affected them in some spheres of life.

The leaders of Parsi community were in favour of proper

codification of laws, keeping in view, the pace of changes in the community and society. The Parsi Marriage and divorce Act, 1936, and the Succession Act were passed with the support of the community. Thus, the women enjoyed respectable status.

(B) Status of Women in Modern Period

Now, a Parsi woman is entitled to both religious and secular education. Marriage is solemnised by the performance of religious ceremony but it is a contract. Consent of both the spouses is must for the validity of Marriage. Monogamy is the strict rule. The child Marriage has not been approved in the past as well as present by the religious traditions. Minimum marriageable age has been prescribed. The matrimonial remedies of divorce, Judicial separation, Restitution of conjugal rights etc. are available to the both spouses under the Parsi Marriage And divorce Act, 1936. Thus, the women are placed in an honourable position.

V SOCIAL WELFARE LEGISLATIONS FOR THE BENEFITS OF WOMAN

In addition to the Constitutional provisions, a large number of other welfare legislations have been passed to protect the interests of women and to ameliorate their position and status in the society. The Dowry Prohibition Act, 1961, The Equal Remuneration Act, 1976, the Medical Termination of Pregnancy Act, 1971, The Prevention of Immoral Traffic Act, 1986, The Indecent Representation of Women (Prohibition) Act, 1986, The Commission of Sati (prevention) Act, 1987, the insertition of Sections 376 A to D and Section 498 A in the Indian Penal code are some of the legislative efforts to ensure dignity and social status of women. In
addition to these legislations, special provisions have also been made to benefit women under various labour laws. Under The Maternity Benefits Act, 1967, a woman worker is entitled to maternity leave before and after delivery. There is a prohibition on employment of women in dangerous and hazardous tasks. The Factories Act, 1948, The Plantation Labour Act, 1951, The Mines Act, 1952, The Bidi and Cigar Workers (condition of employment) Act, 1966, prohibits employment of women between 7.00 P.M. to 6.00 A.M. To solve the problems of care of young children, various industrial laws provide for setting up of creches for children of working women. The special provisions for separate urinals, latrines and washing facilities are also to be made for them in every factory/mine/plantation.

In addition to above, the enactment of Criminal Law (Amendment) Act, 1983, has introduced several reforms concerning the punishment of rape, the procedure and the rules of evidence. Now, the onus of proof has been shifted from the victim to the offender. Similarly, substantive law also exists for punishment of the offences which are directed against woman or in which she is a victim. So, eve-teasing, molestation, wife-beating, wrongful confinement, Bigamy, fraudulent marriage, adultery, enticement of married woman, cruelty on married woman, kidnapping, abduction, Rape, outraging the modesty of a woman are some of the offenses against women which have been made punishable under various Sections of the Indian Penal Code.

These welfare legislations are passed, keeping in view, the biological factors and the special roles women have to play in the society. These legislation, may give an impression
that women are enjoying a privileged position in the society. But inspite of equality of opportunities and other Constitutional guarantees, the women continue to be victims of exploitation, discrimination and abuse in their matrimonial homes. Her progress is being thwarted by the long established socio-cultural traditions and certain social evils. If we scrutinise various laws we find that the rights of women are still inferior to those of men. The discrimination is not only between woman and man but also between woman and woman because of different personal laws. Unless and until, these discriminations are removed the women will continue to be depressed and deprived class of the society.

VII ANOMALIES, DISPARITIES, DISCRIMINATION AND INEQUALITIES UNDER DIFFERENT LAWS.

(A) Hindu Law

The women are being discriminated in the following matters:

(i) Agricultural Land

While agricultural law in India forms the bulk of property, there is total denial of rights to the in most of the states. The Hindu Succession Act, 1956, has not brought out radical changes in the rights of women. The female heirs are excluded from the devolution of tenancy rights under the legislations of the states. Section 4(2) of the act makes it inapplicable to any law which provides for the prevention of fragmentation of agricultural holdings, the fixing of ceiling
or the diversion of tenancy rights.80

In respect of such holdings, while providing legislations for agricultural land, several states have excluded widows and daughters. The denial of rights a widow is absolutely inconsistent with other laws. The committee on the status of women in India has recommended that in order to achieve the social equality of women, the exception provided in Section 4(2) of the Hindu Succession Act, 1956, relating to revolution of tenancies be abolished.

(ii) Ancestral Property

The Hindu Succession Act, 1956 has recognised the rights of woman to inherit equally with man. The life estate of female heirs has been abolished. However, woman's right to ancestral property is inferior to that of a man. The law in this regard is embodied in Section 6 of the Hindu succession Act, 1956. The retention of Mitakshara Coparcenary has contributed to inequality among sons and daughters. The membership of this coparcenary is confined only to males. A female can only be an heir to a deceased coparcener. In a coparcenary, a woman is excluded by following the principles of succession to coparcenary property by survivorship and not by inheritance. The children of a female inheritor of coparcenary property have right to such property. However, in this case, male children will get a larger share of inherited ancestral property than daughters.

By retention of coparcenary, the female heir's rights are affected detrimentally in other ways also. A coparcener in a joint family has a right to renounce his share. No specific formalities are prescribed under the law for this purpose. Such coparcener will have no interest in joint family, however, it will not affect the status of joint family. This renunciation deprives female heirs of any share. Similar result can be achieved by a father who partitions joint family property during his lifetime without reserving any share for himself.

Transformation of self-acquired property into joint family property, to reduce the burden of income-tax also reduces the share of a female heir, because in self-acquired property she would have had the right to inherit equally with the male members as class I heir.

The committee on the status of women in its report has recommended the abolition of the right by birth and the conversion of Mitakshara Coparcenary into Dayabhaga one.

(iii) Testamentary Disposition

The Hindu Law places no restrictions on power of testamentary disposition. During the debates in Lok Sabha on the bill, the fear was voiced that this may lead to the rights of a female heir being defeated. But Law Minister, Pataskar dispelled these views by saying:

"I believe that a normal father will never do any such thing and if at all he has to do it for any reason, he will surely make a provision for his daughter when he is going
to deprive her of her share by will.\textsuperscript{81}

It is pointed out in the report of the committee on the status of women:
"An analysis of the inmates of rescue homes in this country will prove how many of these women are there who have been thrown out of the joint family". It further says "there are many women who have been reduced to destitution or beggary because their families have deprived them of all support."\textsuperscript{82}

So, it has been recommended by the committee that testamentary disposition should be limited under the Hindu Succession Act, so as not to deprive legal heirs completely.

(iv) Inheritance to Dwelling House

There is a discriminatory provision in the Hindu succession Act, 1956, relating to the right of inheritance to a dwelling house. It provides that if a Hindu dies intestate and his property includes a dwelling house wholly occupied by the members of the family, then, the female heirs are not entitled to claim partition of it unless the male members choose to divide their shares in the dwelling house. Female heirs are entitled only to the right of residence. Even in this there is discrimination as this right is restricted to unmarried or widowed daughters or those deserted or separated from their husbands. A married daughter enjoys no such right.\textsuperscript{83} Nothing justifies the distinction between married and other daughters. There is need to remove this discrimination

\textsuperscript{81} Lok Sabha Debates, (1955), 5, Col. 8379.
\textsuperscript{82} Supra Note, 76, p. 138.
\textsuperscript{83} Section 23.
and all daughters should have the same rights.

(v) Matrimonial Property

A Hindu woman has a right to own and dispose of her personal property without any control from the husband. In the socio-economic situations prevailing in our country, the contribution of the wife to the family's economy is not recognised. A woman's contribution in the acquisition of family property is not still evaluated in terms of the contribution. The work of the woman and the labour she puts in running home is conveniently forgotten. So, it is necessary that legal recognition should be given to the economic value of the contribution made by the wife through house work, for the purpose of determining ownership of immovable property, instead of continuing the archaic test of actual financial contribution.

(vi) Adoption

A woman has capacity to adopt a child if she is unmarried, widow or divorcee. The uncodified law did not recognise wife's right to adopt a child. Now there is fundamental departure from the old law. But even now, a married Hindu woman can't adopt even with the consent of her husband. The child is adopted by married male with the consent of his wife. The right of adoption should be equally available to the husband and the wife, so that one may adopt the child with the consent of the other spouse.
(B) Muslim Law

Even after independence, there are some anomalies and discriminatory provisions in the existing laws. Ironically, the Muslim women in the countryside are still governed by the unreformed Hindu Law, which denies them all inheritance rights although their Muslim sisters in the towns have been given property rights in 1937 by the Shariat Act.

According to law of inheritance, the share of a male heir of the same degree is twice that of a female. Thus, the share of a son is twice that of a daughter and that of a brother is twice that of a sister of the same degree. Under Muslim law, the share of a widow in the presence of a child of the deceased or the descendant of a son, is 1/8 of the estate. If he left no child or descendant of a son, her share is 1/4. If a Muslim has more than one wife, the widows together take the share. Under the Hanafi law, which governs the majority of Muslims in the sub-continent, if the deceased left behind a widow or widows and the three brothers, the widow or widows will be entitled to 1/4 and the three brothers to 3/4 of the estate. Her position can not be rectified even by resorting to testamentary disposition as under the Hanafi law there can’t be bequest to any heir unless other heirs consent to it and the consent should be obtained after death. So, due to these anomalies in the law of inheritance and property, the status of the Muslim women has been adversely affected.

(C) Christian Law

Section 10 of The Indian Divorce Act, 1869, provides an example for discrimination. According to this Section, a
husband is entitled to seek divorce on wife's adultery. But a wife for seeking a divorce has to prove an aggravating circumstance in addition to adultery, like, apostasy, marriage with another woman, incestuous adultery, bigamy with adultery, adultery with cruelty, or adultery with desertion.

This provision was challenged on the ground of being violative of Article 14 of the Constitution. But Madras High Court in *Dwarka Bai v. Nainan Mathews*\(^{84}\) case, upheld its validity on the basis of reasonable classification. It was observed:

"It appears to be based on a sensible classification and after taking into consideration the abilities of man and woman, the results of their acts and not merely based on sex, when alone it will be repugnant to the Constitution."\(^ {85}\)

Even after the passing of The India Succession Act, 1925, which regulates succession of native 'Christians', local customary Law or local statutes are made applicable in the territories of former states of Tranancore, Cochin and Pondichery. The application of these customary laws is disadvantageous for the Christian women.

There is diversity of laws relating to Christians. The Travancore High Court held that the Indian Succession Act, 1925 does not apply to the Christians of that state. There is discrimination even within the same community. The committee

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84. A.I.R., 1953, Mad., p. 792.
85. Ibid., p. 799.
on the status of women in its reports pointed out these legal
lacunas. Christians are still governed by the personal
laws. The personal laws are based on the traditional Hindu Law of
inheritance which discriminates against woman. A widow or
mother inheriting immovable property takes only a life
interest terminable on death or remarriage and a daughter's
right is limited to stridhan. It is only very recently, the
supreme court in Mery Raj v. State of Kerala\textsuperscript{86} case, reversed
Travancore High court judgment and held that the Christians in
former Travancore and Cochin states are governed by ISA by

Similarly, Christians of Goa continue to be governed by
the Portuguese Civil Code. This code makes no distinction
between brother and sister but it relegates the widow to a
very low position.

The position in former French Colony, 'Pondichery' is no
different. With respect to them the Madras High Court in
Pauline Lucas v. Jerome Pascal\textsuperscript{87} held that they are governed
by the Hindu customary law as applicable prior to the passing
of The Hindu Succession Act, 1956, and that a son excludes a
daughter in the Law of Succession.

So, in spite of better status, Christian women also
suffer from some disabilities.

\textsuperscript{86} A.I.R. 1986, S.c. 1011.

\textsuperscript{87} A.I.R., 1977, Mad., 270
(D) Parsi Law

The law relating to succession to the estate of a Parsi dying intestate is laid down in Sections 50 to 56 of the Indian Succession Act, 1925. Under this Act, a woman has been put in a disadvantageous position. Under this Act though right of a female to succeed to the property of a Parsi male is recognised in law, her share is only half of the male counterpart.

So, we see that the women are discriminated under all personal laws. The iniquitous inequalities in law must go. Humanism must be the basis. Women's organisations must be protagonists in sponsoring a movement for equal justice.

VIII CO-RELATION BETWEEN STATUS AND MATRIMONIAL REMEDIES

This relationship under different personal laws is discussed as under:

(A) Hindu Law

The various pieces of legislation passed after independence have helped in promoting emancipation of the Hindu women to a greater extent. But they are still the victims of exploitation. The benefits of various laws are not reaped to the maximum extent by them.

Women, by and large, constitute a neglected Section of
the society. An important document rightly deplores large majority of women of India have not been benefited from development and that:

"There is now indisputable evidence of steady decline in the value of women in society."

As the marriage was a sacramental affair during the Vedic period. The deal was a 'never parting' 'United Pair' 'sharing the same Married Pleasures' Marriage, being a samaskar, divorce was not generally recognised, but an exception was made in those cases where custom sanctioned it.89

In the Post-Vedic and the medieval ages the Status of Hindu Women further deteriorated. The husband exercised full control over the wife. The wife could not compel the husband to provide conjugal company to her, while due to social and economic needs she could not think of withdrawing from husband even in case of ill treatment.

Baring the remedy of Judicial Separation, matrimonial remedies of Restitution of Conjugal Rights, Nullity and annulment of marriage in one form or the other existed under the old Hindu Law during the period of British


Administration. But even during this period women suffered from many disabilities due to illiteracy and ignorance of laws. But if we throw a glance at the decided cases we find that the various remedies were not generally used by wife because of compelling social conditions.

The Hindu Marriage Act, 1955, does not reflect any discrimination against women. But we see that various remedies are being misused by the husband against wife. The secured economic status and privileged social position prompts a male to use legal process for spurious motives. Despite profound changes in the attitudes and practice of accepting a working wife, there is no change in the notion that it is the wife, who has to follow her husband wherever he wishes to live and not vice-versa.

The problem regarding determination of 'Matrimonial Home' is very common and there is a crisis of wife's employment and marital obligations91 Due to male dominance in Hindu society, the husband claims his prerogative to determine locus of 'Matrimonial Home'. Some High Courts92 have succumbed to the temptation of vindicating the ancient supremacy of the husband over his wife, thus, affecting the position of wife adversely.


The wife may be dragged to the court unnecessarily by the husband. Further, the wife has no time and money to go to court for spurious litigation. Even in case of hardship the wife is hesitant to seek divorce or judicial separation. She does not see any ray of hope even in case of dissolution of marriage.

Due to economic dependency on husband, ignorance of laws and other social compulsions, the wife find it very difficult to approach the courts for relief even in cases of genuine difficulty. The legal and social implications of various matrimonial remedies are against the interest of women.

So, due to lower social and economic status, various remedies are generally of no use for the wife. The judicial interpretation in decided cases has also not been liberal and the approach in most of the cases, has been literalist and in favour of males. This judicial attitude also tends to impede the pace of social change. The matrimonial remedies can be helpful only if the status of woman is raised.

(B) Muslim Law

Muslim women are put in a very disadvantageous position due to frequent Talaks, Polygamy, seclusion and ignorance of laws. The male has unbridled and absolute power to divorce his wife. A divorced woman is entitled to maintenance only during Idaat period. Even divorce does not end her miseries but further aggravates them. The frequent Talaks have adversely affected the status of women in the society.

Though the remedies of divorce, restitution of conjugal
rights etc are also available to the wife, yet the remedies are sparingly used. Due to absence of mutuality, the remedies are inequitable and against the interests of wife. The lower social and economic status of women prevent them from approaching the court to seek matrimonial remedies. The husband can easily frustrate the genuine claim of wife by pronouncing Talak on her. A Muslim woman can easily imagine the fate of a divorcee when she is left high and dry without any right to claim maintenance after the lapse of Idaat period. Thus, the remedies are of little use for the wife due to her lower social and economic status in the society.

(C) Christian Law

Women enjoy a better position under Christian Law due to Westernisation, the influence of Christian Missionaries and other factors. However, despite of better social and economic status, the matrimonial remedies of Restitution of Conjugal Rights, divorce etc. are sparingly resorted to by them. The grave after-effects and other implications create further hindrance along with financial difficulty.

(D) Parsi Law

In spite of some discriminatory provisions relating to the succession, the women have been placed in honourable position under the Parsi Law. However, Parsi Panchayat works as internal form of government. The people like to settle their matrimonial disputes out of the courts. Thus, in a very few cases, the spouses have approached the courts for matrimonial relief. We do not find even a single reported case under the Parsi Marriage And Divorce Act, 1936, relating to
Restitution of Conjugal Rights. The better social status also does not mean that the spouses will frequently approach the courts for claiming matrimonial remedies.

Thus, we see, the passing of legislations is not sufficient to emancipate women from their lower status. There is co-relation between the status and matrimonial remedies. The remedies have not been frequently resorted to by the woman who are placed in disadvantageous position and suffer from many disabilities under different laws. Unless and until, the status of women is raised, the matrimonial remedies are of little use for them. The legal process in our country is exotic and expensive. Due to ignorance, poverty illiteracy and social depraved status, the women are deterred from approaching the courts to seek matrimonial remedies which are generally used against their interest.

To raise the status of women a multi-dimensional approach is needed. Women's rights are part of human rights. Gender Justice is integral to social justice.

Krishna Iyer J., has rightly pointed out:

Gender injustice to the weaker sex is the disturbing concern of all Indians, men and women, politicians, professionals and people with social conscience, and we must battle for the cause of freedom and development of the feminine sector as an integral part of the struggle for human justice.\(^{93}\)

The progress of the society is not possible till equal

status and equal partnership is given to women in all walks of life. Iyer J. further emphasises:

"The rule of law is at the service of the rule of life and the battle of justice for woman kind must begin with a gender jurisprudence which salvages the; "weaker" sex, equalises her status and organises her role in society in such a manner that a fair partnership in all walks of life in actualised in villages and towns among the tribal and the down-trodden, even among the middle and upper brackets and woven into the warp and woof of public life."

There is need of educating women regarding their rights and the important role being played by them in the society. The woman will have to come forward and show courage to shatter the traditional bonds which hamper their progress in society. In this regard Joseph Minattur has rightly pointed out:

"From a study of the ameliorative legal provisions relating to women and the actual situation in which they find themselves, it is clear that something more than legislation is required. Perhaps the first thing to be attempted is to make women aware of their rights, however, this is done."

Thus, the matrimonial remedies will be useful only when women are placed in honourable position in the society by raising their status.

94. Ibid., p. 252.