The Sociology of Law (or Legal Sociology) is often described as a sub-discipline of Sociology or an interdisciplinary approach within legal studies. Sociology of Law defined as a sub discipline of Sociology, an approach within Legal studies or a field of research in its own right, it remains intellectually dependent mainly on mainstream Sociology i.e. it draws social theories and employs social scientific methods to study law, legal institutions and legal behavior.

1.1 Sociological approaches to the study of Law:

The sociology of law became clearly established as an academic field of learning and empirical research. The study of law was not central in Sociology, although some well-known Sociologists wrote about the role of law in society. According to Talcott Parsons (1975), law is conceived as an essential mechanism of social control. Philip Selznick (1963) explained that modern law became increasingly responsive to a society's needs and had to be approached morally as well. In recent years, a very wide range of theories has emerged in the sociology of law as a result of the proliferation of theories in sociology at large. Among the recent influences can be mentioned the work of the French philosopher Michel Foucault (1976), the German social theorist Jurgen Habermas (1956), feminism, postmodernism and deconstruction, neo-Marxism, and behaviorism. The variety of theoretical influences in the sociology of law has also marked the broader law and society field. The multi-disciplinary law and society field remains very popular, while the disciplinary specialty field of the sociology of law “is also better organized than ever in institutional and professional respects”(Adam 1985).

1.2 Law and society:
1.2.1 Importance of Law in society:

Law is important for a society. It serves as a norm of conduct. It was also made for the proper guideline and order upon the behavior for all human being and to sustain the equity on the branches of the government. Law is important because it keeps society running. Without law there would be chaos and it would be survival of the fittest and everyman for him, not an ideal lifestyle for most law is important because it acts as a guideline as to what is accepted in society. Without it there would be chaos and conflicts between social groups, society, construction, etc. Laws are everywhere and it is pivotal that we follow them. Law allows for easy adoption to change that occur in society. As time changes so will a law. Laws are constantly being amended when needed. People may not agree with a certain law but that is just the way society works. Laws are generally based on common sense (i.e. don't drive drunk, respect others and their belongings etc). Generally if all people at all times followed common sense, laws would generally not be necessary. Other laws are used to regulate things such as: trade, immigration and sales.

1.3 Law and social change in India:

Social change involves an alteration of society. Its economic structure, values and beliefs, and its economic, political and social dimensions also undergo modification. However, social change does not affect all aspects of society in the same manner. While much of social change is brought about by material changes such as technology, new patterns of production, etc, other conditions are also necessary. For example legal prohibition of untouchability in free India has not succeeded
because of inadequate social support. Nonetheless, when law cannot bring about change without social support, it still can create certain preconditions for social change. Moreover, after independence, the Constitution of India provided far-reaching guidelines for change. Its directive principle suggested a blue-print for a new nation. The derecognition of caste-system, equality before the law, and equal opportunities for all in economic, political and social spheres were some of the high points of the Indian Constitution. Some areas where law has given the influence for social change are:

1. Area of agrarian reform policy and legislation;
2. Area of implementation of untouchability abolition law;
3. The normative aspects of employment and educational reservation for the scheduled castes and scheduled tribes under the Constitution;
4. The allied field of abolition of bonded labour;
5. The problem of substantive impact of changes in the family law marriage, equal rights of women to inheritance and dowry.

1.4 The position of women among present piecemeal laws of women:

For almost two decades women organizations spoke for all Indian women. They demanded the trapping of modern life, education, health care, framework of social feminist ideology that constructed women’s as sociology and psychologically different from men. They acknowledged India’s special problems especially child marriage, pardah, and the oppressions of widows and agreed that these practices made reform doubly hard. But in their view two things gave reform and its impetus. First this custom had not existed in India’s “Golden age” second as Indian women; they were blessed with a legacy of goddesses and heroines who willingly sacrificed themselves for husband and families. This habit of sacrifice was now valorized as worthy of extension to civil society and the nation. These organizations had been nurtured by two opposing forces nationalist aspirations and
colonial dominations. Their vision of modernized women threatened neither the patriarchy of the British rulers nor the patriarchy of Indian nationalists. The ideology of women’s organization was too Hindu, too middle-class and too urban to appeal to or adequately represent all Indian women. An informal survey completed in 1932 estimated that 90 percent of Indian women were wage earners and only married women among the well to do families and those of higher social standing do not work for wages.

Muslim women, unless they could agree to a secular Hindu national project, were not adequately represented. Urban and rural working women took part in patriotic demonstrations but they were never fully integrated into the women’s organizations. In fact, well educated women like Latika Ghosh (1930) modified the vision of civil society to appeal to their more traditional sisters. Though it was evident women’s organizations did not speak for all women; their memorials and petitions. Claiming this consistency went virtually unchallenged until the late 1930s. Over the next two decades women became active in a variety of social and political movements undermining the hegemonic claims of the major women’s organizations.

New ideologies significantly altered the discussions of what women wanted women failed for their evolutionary activities read socialist literature in prison and joined Marxism’s first converts. They gained a new vision of women’s place in society and after being released worked side by side with men spreading the message of socialist revolution. They also formed their own women’s organizations to work specially on women’s issue and to give public voice to their interpretation of women’s demands. Begum Sharifah Hamid Ali (1987) a tireless worker for women’s rights stood firm with the women’s organizations. Sharifa Hamid Ali was appointed to the women’s subcommittee of the National Planning Committee. The subcommittee, established status of women and suggesting measures of make equality of status and opportunity and a possibility in the planned economy of free India.
1.4.1 Women’s Economics Issues:

There are many ways we could assess women’s status based on their economic position. Regardless of the indices consulted—ownership of property, control of resources, wages earned, food consumed, and access to medical care or sex ratio. Towards equality one can blame women’s laws, economic status on public policies that view women’s work as supplemental to family incomes and to the economy generally. Statistical evidence from the census showed a decline in women’s participation in the formal economic sector, both as a percentage of the total female population. At the same time women have made substantial gains in the professions and certain sections of the service industries. Working women challenges the assumption that women’s position will automatically improve as the economy modernizes. The very opposite seems to have happened, when work moves from the household to the factory or mill, it is women who lose, race or data also calls into question assumptions above to the women of family prosperity. Most of social scientists interested in India’s economic development have assumed that richer families would provide better food, clothing and medical care for their daughters as well as their sons. “female feticide” is the practice of aborting the female fetus after sex determination tests offers another challenge to the view that property will benefit females. The contemporary women movement dubbed in retrospect first wave feminism condemned tradition and religion for women’s suffering and sought redress in education and legal change.

It was feminist in the society since that leader of the organizations forming this movement recognized women as oppressed because of their sex. They constructed women as biologically, psychologically and spiritually different from men and based their claim for representation to public life on the complementarily of this difference. Women social feminists had a special knowledge of the household and family matters to forums whose public policy was debated and formulated. This ideology filled well with Gandhi’s access to economic resources like credit, loan skill up gradations, organizations etc., making economically more productive will lead to
1. Reducing fertility rate of population growth
2. Improving child survival
3. Increasing the share of family income for food and health etc.

1.4.2 Women and Household:

The contribution of women to the national economy and to their families remains underestimated. Their contribution in the field of agriculture, food production, forestry, animal husbandry etc., adds to the gross national product. But remains unorganized sectors indicated rural household are headed by women on account of male migration to urban areas caused for neglect or abandonment. These women headed households generally survive minimum income levels.

1.4.3 Women and Agriculture:

Nearly 70% of Indian rural women are employed in agriculture and they are responsible for 60-80 percent of food production. They play major role in animal husbandry, horticulture and poultry which are their main source of income and it is noticed that they always involved in labor and tolerance intensive works like transplantations and weeding operations.

Among the rural women workforce, most of them are agriculture labor and some of cultivators. There are lot of variations in involvement of women in agriculture which is based on their culture, economic status, regions and crop selection. While the men are moving to cities for better occupations the women are taking care of cultivation and sometimes they used to work as farm labor to support their family needs. The weaker section of the women used to market their products such as selling vegetables and other food crops in farmers market or door to door. Most of the women cultivators are involved in food crops rather than cash crops since cash crops need more marketing efforts which
are traditionally taken care by men. The women in higher socio economic sections are not involved directly in cultivation or live stock and they used to help in labor administration, supporting activities and accounting.

Ironically, we often define the men as farmers, in fact the women also equally involved in agriculture in all phases. If we think beyond the conventional definition of farmer, most of the rural women should be considered as farmers but they are ignored. Still Indian society has some gender boundaries, but the rural women involve in multiple productive roles and it is necessary to give equal opportunity in agriculture. Most of the women farmers are marginal or small farmers, landless tenant farmers and farm labor; they don’t have enough land to cultivate, less knowledge, limited access to innovative technologies, low capital and less credit facilities.

1.4.5 Selective Discrimination against women in Agriculture:

According to a survey conducted by the Labor Ministry of India, Women get only 60 percent of a male worker’s wages for same type of work. But Planning Commission of India has reported as much as 75 percent wage differentials in male-female wages. Further, although, women are extensively involved in agriculture of India but their suggestions are not taken in any type of decisions in agriculture. This is because in India a man thinks it very shameful to act upon the advice of a woman. With this background, the paper attempts to highlight the discrimination against Indian women in agriculture. It is advisable on the part of the Indian government that education, training and development programmes for women should be at top agenda of the government. Various extension programmes must be implemented with full enthusiasm and political will. Only then the poor women can have a hope for justice.

1.4.6 Women in Un-organized sector:

During the decade 1981-91 the percentage of female workers both main and marginal has increased in rural as well as urban areas. The percentage of marginal workers among
males, on the other hand has declined in rural law well as urban areas. The oblivious reason for increased visibility in work participation rates of female could be improved canvassing during the 1991 census. The improvements are noticeable in occupational categories of cultivated trade and commerce and other services. There are nine states and union territories where the female work population of women in the female work force engaged in the unorganized sector is estimated to be 90 percent. The largest single factor among the status of women today in the changing family pattern coupled with increase access to formal education. Even through the percentage of women in higher education is still considerably lower than then that of men in all countries where data are available; there is a evidence of strong correlation between educational level and the employment rate of women. The more highly educated married women are the more who are motivated to continue in or return to their careers, irrespective of their husband’s social status or income group. Earlier it was food feared that girls prolonged education might diminish her marital prospectus now we have development whereby education provides additional prestige and represents an important assert for marriage. Women at all times and in all types of economy made substantial contribution to the production and distribution of their community’s resources. But the economic unit in pre industrial society was the family itself; industrialized society introduced a strict separation of the home from the place of work. At present no religion can offer an adequate model for contemporary women’s self understanding. The newness of the situation has to be matched by a corresponding new creative effort on the part of religious leaders and thinker’s male and female alike.

It can be easily estimated that the women working in unorganized sector are living a life far below from satisfaction. They do marry, bear children, and get old but under these phases of life, they live the same life. They suffer from many problems like unhygienic environment, no medical facilities, no awareness regarding laws. It is the need of the hour that Government, NGOs and common people come forward for the betterment of these beautiful creations of GOD. According to census 2001, women constitute 48.26 percent of the total population in India and 25.67 percent of female population is designated as workers.
Almost 400 million people (more than 85 percent of the working population in India) work in unorganized sector and of these at least 120 million are women (2001 Census).

The Indian constitution is one of the most progressive in the world and guarantees equal rights for men and women. Despite the advances women have made in many societies, women's concerns are still given second priority almost everywhere. They continue to face discrimination and marginalization both subtle and blatant and do not share equally in the fruits of development. Their contribution is not given due credit. Women workers in unorganized sector lag behind the males in terms of level and quality of employment. Such women, when they have to perform dual of both outside employment in harsh and hostile working conditions and manage their homes, come across problems, which needs a loud hearing. These women are often illiterate, unskilled socially backward and economically weak which often hide their work participation. Poverty, lack of access to education and inadequate health facilities are their major problems. These workers continue to labor under many severe problems. These women workers working in unorganized sector are generally exploited. They are made to work for long hours and wages paid to them are not according to their work. These women workers are living below the minimum accepted standards without adequate shelter and toilet facilities. During their work, they face a lot of problems, they are exploited, are unaware about their rights. Work from the close study, it can be easily estimated that the women working in unorganized sector are living a life far below from satisfaction. The low earning of these women cannot meet with their daily needs. They do marry, bear children, and get old but under these phases of life, they live the same life. They live under unhygienic environment which results dangerous diseases. They more than men as they have to play a dual role working both in and outside the home.

1.4.7 Women and Family:

Versions of the hypothesis that the nuclear family in functionally appropriate for a modern urban industrial economy and that the nuclear family form will develop when a modern urban industrial economy is established are associated variously by different students of family change with the names of persons, Weberwirth, Lintun and Nimkoff and
Burgess and Locke (1993) may view as it author, this hypothesis has already stimulated much research should eventuate in a more adequate theory of the relationship between family and economy and between family and other cultural organizations regarding Christian also. Family is important in India, and is what their life is centered around. It is common for several generations to live in the same house as an extended family. When a woman marries, she leaves her birth family, many times without seeing them again, and goes to her husband's village and becomes part of his family.

1.4.8 Discrimination in family:

There is significant discrimination toward girls and women. While young girls are expected to help with the women's work (which consists of fetching water, preparing meals, cleaning, and caring for animals) as well as care for their younger siblings; boys have it much easier.

1.4.9 Women in Organized sector

As on the 31st March, 2005 a total number of 50.16 Lacs women employees were engaged in the organized sector, out of which 29.21 lacs (58 per cent) in the public sector and 20.95 lacs (42 per cent) in the Private Sector. Employment of women in public sector increased by 1.1 percent and by 2.5 percent in the private sector during 2004-2005

1.4.10 Then and now: Women and the concept of law

Concepts of Stridhana in Smritis and Mithakshara Law

The Smiritis and commentaries with their roots in a feudal society of agrarian landholdings, prescribed a patriarchal family structure, within which women’s right to property was constrained. Under the Mitakshara law, the property of a Hindu male developed through survivorship jointly upon foyer generations of male heirs. The ownership was by birth and not by succession. Upon his birth the male member acquired the right to property.
Although the male members owned property, this ownership cannot be equated with the modern notion of ownership which essentially confers the right of alienation. The basic characteristic of the joint family property was its inalienability. The property could not be easily disposed of by way of sale, gift or will. Hence the joint ownership, of males was more notional than actual. The property was managed by the head of the family or karta for the benefit of the entire family including its female members. So, in effect, until the property was portioned the right of male members was essentially the right of maintenance. Even after partition, the property in the hands of each of the coparceners, continued to be joint family property, held in trust along with his male progeny for the benefit of the next line of descendents.

Since women did not form part of the coparcenaries, they did not have even the notional right of joint ownership; hence they could not demand partition. After partition, a sonless widow had the right to inherit the share of her deceased husband, when had the right to be maintained from the joint family property and this right of residence. Since divorce was not commonly prevalent, after marriage, women could not easily be deprived of their right of residence and maintenance in their husband’s house.

The husband was bound to maintain the wife despite all her faults including quarrelsome nature, neglect of household, barrenness and adultery, though the scale at which she had to be maintained would go down as per the severity of her faults. He could marry again, but he was under the legal obligation continued to maintain the first wife. In addition the wife was entitled to ‘suoer session fee’ an equal share of the property, which the husband gifted to have new wife. Women also have the right to claim marriage expenses from the joint family property and their marital house.

In order to partially set of the disability suffered under the notion of joint ownership by male members, the Smritikars assigned a special category of property to women they termed as Stridhana. The first mentioned of this term is found in Gautama Dharmasutra. He provided not only for the women’s separate property but also distinct and separate rules for
its succession. From this period to the next millennium the scope of Stridhana was gradually expanded to include almost every category of property.

Continuing the tradition setup by Gautama, Manu laid down six forms of Stridhana consisting of gifts by relatives on various occasions:

- Gifts made to a woman before the nuptial fire (adhyagni)
- Gifts made to a woman at the bridal procession (adhyavadhanika)
- Gifts made in token of love by father-in-law, mother-in-law (pritidatta)
- Gifts made by father (padavandanika)
- Gifts made by mother
- Gifts made by brother

Vishnu, a later smritikar, added four more categories to this enumeration gifts by the husband to his wife on supersession, that is, on the occasion of his taking another wife. (ii) Gifts subsequent that is gifts made after marriage by husband’s relatives or the wife’s parents (anwadheyyaka) (iii) sulka a marriage fee or a gratuity and (iv) gifts from son and relatives. The later stages, Yagnavalkya, Katyayana, Narada, Devala etc., widened the concept further. Yagnavalkya (around second century A.D) expanded the scope of stridhana by adding the word adhya (and the rest) to the enumerations of Manu and Vishnu.

The katyayana smriti lays great emphasis on stridhana and discuss the concept elaborately. Katyayana classified the sridhana property as saudayika and asaudayika and explained the concept as follows: what is obtained by married women or by a maiden, in the house of her husband or her father, from her brother, husband and parents is suudayika stridhana. The saudayika stridhana could include immovable property. He emphasized the exclusive ownership both in terms of sale and gift and lay down: Neither the husband, nor the son, nor the father, nor the brothers have authority over stridhana to take it or give it away. This injunction is almost in the nature of a warning to male members to lay their
hands off the women’s property. If the husband borrowed saudayika money, he was under a legal obligation to repay it with interest.

The wealth which was earned through mechanical arts or through gifts from strangers during the subsistence of marriage was categorized as asaudayika stridhana and only these were made subject to husband’s control. This is not to deny that these were also a women’s separate property or her stridhana which she could use according to her will. The stipulation was merely that women had to obtain her husband’s consent before disposing off the property of this category during the subsistence of her marriage. There also seems to have been a usage that property up to the limit of husband planes should be given annually to a married woman by the father, mother, husband, brother or kindred (relatives) for her personal use.

The Mitakshara (Vijnaneshwar, 11th century A.D) the most widely recognized source of the Anglo-Hindu law, expanded the scope of the term adhya mentioned by Yagnavalkya and laid that property obtained by a women through inheritance, purchase, partition, seizure, and finding is her stridhana. Through this expansion, every category of property was brought under the scope of stridhana and the women were granted exclusive ownership over it. While this was endorsed by many of the later commentators, Vyavahara Mayuka (of Nilakantha Bhatta, 7th century, Bombay school) further expanded the scope.

The Dayabhaga, the accepted authority of the Bengal school, did not adopt the notion of joint male ownership or coparcenary. Upon the death of the head of the family, the property was partitioned equally between the legal heirs. Women, as widows, daughters and mothers were conferred a share in the family property. Despite this, even the Dayabhaga School recognized the concept of a women’s specific property. But in the absence of a coparcenary spreading over four generations, the need to be prescribed a
wide interpretation to the term was absent here. So under the Dayabhaga system, stridhana was restricted to gifts and moveables. Under all other schools, stridhana including moveable, as well as immoveable property acquired by a woman by her own exertions was her stridhana according to the Bombay, Benares and Dravida schools.

As can be observed, a system of property ownership by women seems to have been an integral and significant part of the ancient moral, ethical, and legal social norms. Due weightage was granted to this subject in Sanskrit scriptures. It does appear that patriarchal collusions constantly undermined the scriptural dictates of the dharma of stridhana. At each time smritikars, with great effort, brought the emphasis back to women’s ownerships of property and that process also expanded its scope. There seems to be a constant tussle between the smriti dictates and patriarchal subversions within the family. The task of the smritikars seems to have been challenging, as can be observed from the comments of Jimutavahana, the author of Dayabhaga, on completion of his chapter on stridhana. They have been explained the most difficult subject of succession to childless woman’s stridhana.

The most distinguishing feature of stridhana property was its line of descent. Under Mitakshara after the women’s death. It devolved firstly on the unmarried daughter, and then on the married daughter, who is not provided for, followed by the married daughter who is provided for. Next in line was the daughter’s daughter’s son. The women’s own son could inherit it only in the absence of heirs in the female line.

1.4.11 Women and socio-economic and law concept

To participate and advice on the planning process of socio-economic development of women is one of the functions assigned to the commission under section 10(1) (i) of the National Commission on Women act. The planning process for socio-economic development covers avoids range of issues. During the period under the report the commission’s
Interventions in the planning process for women’s socio-economic development were mainly in the following areas.

1. a) Safeguards provided for women under the construction and other laws.

   b) Present to the central government, annually and at such other times as the commission may fit, reports upon the working of those safeguards.

   c) Make such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the union or any state.

   d) Review, from time to time the existing provisions of the constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial measures to meet any lacunae, inadequacies in such legislation.

   e) Take up the cases of violation of the provisions or the constitution and of other laws relating to women with the appropriate authorities.

   f) Look into complaints and take sue motto of matters relating to

   (i) Deprivation of women’s rights.

   (ii) Non-implementation of laws enacted to provide protection to women and also achieve the objective of quality and development.

   (iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to Women and take-up the issues arising out of such matters with appropriate authorities.

   (iv) Call for special studies or investigations into specific problems and atrocities against women and identify the constraints so as to recommended strategies for their removal.

   (v) Participate and advice on the planning process of socio economic development of women.
(vi) Evaluate the progress of the development of women under the union and any state

(vii) Fund litigation involving issues affecting a large number of women

(viii) Make periodical reports to the government on any matter pertaining to women and in particular various difficulties under which toil occurs.

(ix) Any other matter which may be referred to it by the central govt.

2. The central government shall cause all the reports referred in clause (b) of sub-section (1) to be laid before each house of parliament along with memorandum explaining the action taken or proposed to be taken on the recommendations relating to the union and the reasons for the non-acceptance, if any, of any of such recommendations.

3. Where any such report or any part thereof relates to any matter with which any state governments is concerned the commission shall forward a copy of such report or part to such state government who shall cause it to be laid before the legislature of the state along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the state and the reasons for the non-acceptance.

4. The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (I) of clause (f) of sub-section (1) have all the powers of a civil court trying in particular in respect of the following matters, namely,

i) Summoning and enforcing the attendance of any person from any part of India and examining him on oath

ii) Requiring the discovery and production of any document

iii) Receiving evidence on affidavits

iv) Requisitioning ant public record or copy thereof from any court or office

v) Issuing commissions for the examination of witnesses and documents

vi) Any other matter which may be prescribed

Through socio-economic concepts so far our Indian society has achieved security measures on women to some extent alone. This fact is clear from the Census of India 1991.
1.4.1 Census of India 1991

The first Census of India was taken in the year 1872, but this was on the result of the census taken in various parts of India. Since 1881, India has a regular census in every ten years. The 1991 census represents the 13th census of India reckoned from the 1872 and 5th census after Independence.

In the present census sex ratio is adverse to female i.e. number of females per thousand males has generally been less than 1000.

Table no – 1.1

Sex ratio as per 2001 census

<table>
<thead>
<tr>
<th>Sex ratio census/year</th>
<th>1901-1991 sex ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901</td>
<td>972</td>
</tr>
<tr>
<td>1911</td>
<td>964</td>
</tr>
<tr>
<td>1921</td>
<td>955</td>
</tr>
<tr>
<td>1931</td>
<td>950</td>
</tr>
<tr>
<td>1941</td>
<td>945</td>
</tr>
<tr>
<td>1951</td>
<td>946</td>
</tr>
<tr>
<td>1961</td>
<td>941</td>
</tr>
<tr>
<td>1971</td>
<td>930</td>
</tr>
<tr>
<td>1981</td>
<td>935</td>
</tr>
<tr>
<td>1991</td>
<td>929</td>
</tr>
</tbody>
</table>

Processional population figures at a glance

Table no 1.2

Population of India as per 2001 census

| Total                  | 843930,861          |
Males | 437597929  
Females | 406332932  

Table no – 1.3  
Decennial population growth 1981-91  
| Absolute | 1,60,601.764  
| Percentage | 23.50  
| Density of population | 267 per sq.km  
| Sex ratio | 929 / 1000  

Table no – 1.4  
Literacy Rate as per 2001 census  
| Total | 52.11%  
| Males | 63.86%  
| Females | 39.42%  

Notes: (i) While working out the density, the area and population of Jammu & Kashmir have been excluded as comparable data are not available  
(ii) Literacy rates exclude data of Assam & Jammu and Kashmir

At present India’s position is second among the four largest countries in the world’s population estimates by the United Nations World Population is 4439 million.

1. China - 1160 million  
2. India - 843 million  

The area of India is 3.28 million sq.kms out of total world area 135.79 of million sq.kms.
At present women’s population is meager while compared to men population. Hence we are in a dire consequence to preserved population potential of women mainly through law.

Table no – 1.5

Literacy rates as per 2001 census

<table>
<thead>
<tr>
<th>Census Year</th>
<th>Persons</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901</td>
<td>5.35</td>
<td>9.83</td>
<td>0.60</td>
</tr>
<tr>
<td>1911</td>
<td>5.92</td>
<td>10.56</td>
<td>1.05</td>
</tr>
<tr>
<td>1921</td>
<td>7.16</td>
<td>12.21</td>
<td>1.81</td>
</tr>
<tr>
<td>1931</td>
<td>9.50</td>
<td>15.59</td>
<td>2.93</td>
</tr>
<tr>
<td>1941</td>
<td>16.10</td>
<td>24.90</td>
<td>7.30</td>
</tr>
<tr>
<td>1951</td>
<td>16.67</td>
<td>24.95</td>
<td>7.93</td>
</tr>
<tr>
<td>1961</td>
<td>24.02</td>
<td>34.44</td>
<td>12.95</td>
</tr>
<tr>
<td>1971</td>
<td>29.45</td>
<td>39.45</td>
<td>18.69</td>
</tr>
<tr>
<td>1981</td>
<td>36.17</td>
<td>46.74</td>
<td>24.88</td>
</tr>
<tr>
<td>1991</td>
<td>52.11</td>
<td>63.86</td>
<td>39.42</td>
</tr>
</tbody>
</table>

1.3 The position of women and law:

Women’s rights these days are issues hotly debated, both within the precincts of parliament, the courts, as well as in public. Various studies have highlighted the changing roles and status and problems of women, in the family, and to some extent at the workplace. A brief review of the status of women needs mention at the present juncture. The Vedic age, saw women enjoy a relatively high position in terms of spiritual progress and intellectual development. The injunctions of Manu, the ancient law giver who codified Hindu life halted this trend. According to him, women were to be dependent on their fathers in childhood, on their husbands, and adult hood on their sons in their twilight years. The dependency syndrome has become so deeply entrenched over centuries, so
much so that even questioning it results in major repercussions in society. The Mughal and later British rule, there was a positive change in the status of women. Women’s status thus underwent a slow slide over the time. Not until the late 18th century in the midst of British rule, there was a positive change in the status of women. A combination of farsighted administration, social reform and progressive legislation sought to be question and quell the blind dogmatism and castes priorities that marked the life of the Indian people, until 1947. The sati, child marriage, ban on widow remarriage were a few instances of practices derogatory to women in that period.

Commenting on the innumerable studies that primarily focused on the status of women, caplon says, status of women is a nebulous concept and one particularly ill-suited to understanding lives of one half of the population of sub continent marked by its linguistic, religious, regional, Caste and class differences. Nevertheless it is pertinent to note that several studies have also pointed out the growth and development of the women’s movement as a forerunner in propagating and advocating women’s rights over a period of time.

Kumar’s ground breaking book, The History of doing: An illustrated account of movements for women’s rights and feminism in India -1800-1900, provides an insightful and descriptive analysis of the trails, tribulations and triumphs of the women’s movement in India. It can be argued over the last hundred and eighty years, focus of campaigns for an improvement in women’s lives has changed from needs to rights and within this forth restricted right, the parity in selected areas to the large right of self determination (Kumar, 1993)

In recent years, thanks to the espousal of various women’s issues in the media, as well as vigorous campaigns by women’s organizations, the government has also increased and geared itself to addressing various problems of women, through periodic announcements of policies and programmes for women. A status paper by the government
of India, on ‘The Development of women in India’ points to the fact that female literacy rate has improved from 7.9% in 1951 to 39.42 % in 1991. Enrollment of girls has improved. Women’s work participation has increased from 13.99% in 1981 to 16.43% in 1991. Besides, various programmes encouraging women’s employment and training the paper also cites new initiatives on the part of the government that are worth enumerating in following ways.

1. Setting up the National Commission for women
2. Legal literacy manual for women ‘Our laws, a series of 10 illustrated manuals to create awareness about the existing laws that concern women, such as Bonded labour, Hindu adoption and Maintenance, Marriage, Divorce and property , Dowry and rape etc.
4. Data sheet on girl child in India
5. Setting up a National credit fund for women
7. Gender sensitization in the 1961 census data, on the distribution of women workers in the informal sector
8. Training campaigns under Gender Sensitization programmes: In order to sensitize planners, policy makers and enforcement machinery, a country wide gender sensitization programme was launched during 1991-1992. Training campaigns to sensitize police personal and functionaries of various voluntary organizations in the states of Delhi, Utter Pradesh, Karnataka, Maharashtra, Bihar, Haryana, Himachal Pradesh, Madhya Pradesh and Tamilnadu was organized.
9. Data on Maternal Mortality Rates on a regular basis
10. Nationwide campaign to combat atrocities against women, to mention a few new initiatives at the policy level are indicative of emerging trends in the status of women, becoming a major focus in contemporary India (in Sharma, 1994: 1-13)

Even after the good intentions of policy makers, the reality of women in India is one of vast contradictions. Nair (1991) makes an important point, when she sums up women’s status today in nutshell thus: despite 39 percent literate woman (1991 census), opportunities for higher education diminishes, access to paid employment is restricted, women’s presence in the workforce is abysmally low (14%). The demographic disparity between the sexes volumes of systematic, rather than just the episodic or occasional forms of discrimination persists an addition to hierarchies of class, caste and ethnicity, with which the hierarchies of gender interest. This persistence of discrimination against Indian Women, as it exists in the wider societal sphere, according to her, is expressed by ‘the unevenness that marks uneasy access to the legal system’.

1.5 Socio Legal Status of Women in India

The post independence period is the era in which a lot has been done and a lot is to be done for the upliftment and emancipation of the womenfolk. In this period, a large number of legislative measures have been adopted by the parliament and it is evident in the form of several legislations. Judiciary has also not lagged behind. It has by its various judgments and directions kept pace with the parliament and has given also judgments in the areas in which parliament failed to enact any law. The apex court particularly took account the provisions mentioned in the international conventions regarding women. In present scenario position of Indian women has deteriorated a lot. Though women are participating in all activities such as education, politics, media, art and culture, service, science and technology etc. but some newer forms of violence and in most aggravated forms have been witnessed in present times. Even the efforts of
The organs of the govt. cannot be said to be efficient enough as the women today are facing graver problems than that they used to suffer earlier. The enactment of Acts have helped but not totally solved the problem.

Law is nothing but a prescriptive pattern of behavior. Law reinforces the existing mode and provides a uniform procedure for the evaluation and punishment of deviance from the existing rules. It’s a tool of social control and maintainability of social stability. Law also brings about social change by influencing behavior, beliefs and values. As an instrument of social change, law involves two interrelated processes, by means of new enactments institutionalization of new pattern of behavior manifesting new social values.

1.6 Legal scenario

In fact many of the present day legislations trace their origins to the campaigns for social reform in the early 19th century spearheaded by Raja Ram Moham Roy, Keshab Chandra Vidyasagar and other enlighten leaders. Women as pointed out were an oppressed and depressed lot, dictated by the demands of subversive religious and cattiest traditions. Evil practices such as sati, child marriage, tonsuring of widows, and ban on widow were quiet common. The earliest legislation enacted was the child Marriage Restraint Act (1929) otherwise known as Sarada Act, which marked a watershed in the socio-legal scenario of the country. This set the tone of further reforms. People began to question other civil practices that curtailed women’s freedom in speech and movement. The nationalist movement for freedom of the country led by Mahatma Gandhi set the pace for the emancipation of women as seen in their mass participation in this struggle. It led to the unshackling of centuries of isolation, subordination, oppression, and invisibility of women.

The post independence era marked a new beginning of legislative reform for women. The principles of equality, fraternity, and

Though the contours of the legal frame work vis a vais women seem awesome on paper, the reality is a grim scenario – a huge backlog of pending cases in different courts across the country, a lethargic and often indifferent enforcement machinery and above all, ignorance of the law on the part of the masses of both women and men as well as uneaten trenched and conditional gender roles and behavior which dictate and determine the attitudes and behavior of the citizenry across religions, castes and regions. All these have proved a major stumbling block in the realization of a yet unattainable goal of gender justice.

Rights and law have played an integral part in the women’s movement for social change in India. Legal reform in different personal laws has been affected, modified over the years. Lobbying the legislature has often been a strategy by the movement for a law reform. But, today, only cosmetic changes in various laws have been effected. The underlying oppression and unequal power relations, differential expectations of women and men have not been significantly questioned and changed to bring out changes in the law. The notion of law as an end in itself or as a solution to most problems of violence, discrimination etc., still prevails. This has only perpetuated the unequal statues in gender relations. Kapur
(1997) says that understanding the limits of the laws in necessary so as to prevent extreme dependency on the law as a solution to most problems (Schuler and Rajasingham, 1992: 95)

Law as a system and institution does not operate in a vacuum. The functioning of the legal system is very closely related to the social, cultural, economic, normative and political patterns of a society and its people. Hence the notion that Law is for lawyers; law students’ is highly misplaced and unjustified. People need to actively participate and cooperate in the functioning of the judicial system.

Law therefore reinforce women’s oppression by legitimizing gender relations, proprietary rights of man over women, unequal division of labour, power over the allocation of resources etc. Three mechanism are key to this process;

1. Unjust laws that are discriminatory and limit the scope of women’s rights
2. Prejudicial enforcement of laws favorable to women by police or gender biased judgments in courts
3. Ignorance of the laws and of law-making processes by women, who tend to be unaware of their status, of the rights they do possess, of the effect the laws have on them, or the role they might play in changing the law (Schuler and Rajasingham, 1992 ; 27-28). It is thus seen that the law does have a greater role play in shaping society if utilized in a fair and just manner. Former justice Krishna Iyer, a pioneer in upholding the rights of women laments. ‘Is law a hope or a dope and litigation the opium of justice seekers? Courts should not be traps, legislature’s mirages and political executives protected law –breakers’ (Krishna Iyer, 1981:13). He further adds, ‘It is the need to make more citizens aware of their rights, not as abstract buried in the book concept, but as relatives which may be vigorously asserted’ (Krishna Iyer, 1925: 123)
1.7 Enforcement of the law: The Yawning Gap

The implementation of the various laws rests broadly with the police, the regulative arm of the government, the courts, which adjudicate over the legal interpretation of the various laws.

Little attention is focused on the actual functioning or the problem in enforcement, especially, when dealing with women’s rights or crimes against women. Public prejudice and criticism (may be justified in some cases), are generally reserved for the government, police and lawyers, which is a sad commentary on our legal justice system.

According to Sinha, ‘The fabric of social legislation in India at present is, by far and large, poorly drafted, vague and more concerned with demonstrative morality than with practical implementation’. (Sinha, 1983:393) Further. Baxis comments make a telling point regarding the relevance and access of law amongst the Indian people. The state legal system, pervasive in urban areas, is only splendidly present in rural areas. The law visibility of the state legal system, and its slender presence, renders official law (its values and processes) in accessible and even irrelevant for people. Other factors (such as the language of the law, which is alien to about 95% of the people) compound the distance, between the state’s law and the subjects. (Baxi, 1982:345)

In the context of growing public discontent and dissatisfaction with the ineffective and callous functioning of the enforcement of machinery, as media reports and other sources reveal, there is a need to know about the professional view points and problems in enforcement of women’s legal rights. Studies on the functioning or problems in enforcement of the law, especially women’s rights as noted earlier, are limited and generally point to inadequacies or are criticisms of the respective bodies. Public culpability, manifested in apathy and indifference is rarely focused. Despite periodic and sporadic bursts of
sensitive judicial pronouncements or police intervention in significant cases as rape, dowry death etc, as a result of stringent campaigns by women’s groups, there is very real chasm (gap) between theoretical rules and the actual enforcement as well as in the understanding the dynamics of enforcement.

1.8 The importance of self image in the socialization process

   Self image or self concept as its termed in psychological parlance is used to describe the beliefs and attitudes that people have of themselves, de it feelings or beliefs we have about our appearance, background and origins, skills, interests, resources and knowledge (Grasha. 1987; p.477)

   One’s image of oneself develops from birth, through interaction and interrelation with others. Aristotle was not wrong after all, when he stated that, ‘Man is thus social animal’ our concept of ourselves develops through careful nurturing of our communication skills. It is reinforced, modified, or even changed in different situations, circumstances in our daily interaction and relationship with others right from birth with family, friends, relations, colleagues and others.

   In a pluralistic society as India, the process of socialization rests on a sexist ideology of differential and discriminatory gender roles for women and men. Although education and increasing opportunities for women are off-shoots in the post independence era, statistics and several research studies vividly describe female illiteracy as a major different besides poverty and malnutrition to women’s emancipation.

   If education and increased opportunities for women presupposes women’s self confidence, independence and assertiveness, why then are the large masses of both rural and urban women, educated are not so educated still silent, and content with the daily persecution and
oppression they face at home, at work place, in the public. Social customs and social conditioning of gender roles are too deeply ingrained and entrenched in the Indian women’s psyche, despite the cosmetic and minor changes in her life style, wrought by the secular and egalitarian ideology of Indian democracy seen in its various programmes, policies and schemes for women’s upliftment.

Its very particular to state that the awareness the women has to herself is important because the beliefs and attitudes she has about herself has a specific influence on her behavior and affects her full development—be it in the multiple roles she play in the family, community, work, religion etc., this is so because of the integrative capacity of women to pull together in indifferent situations. It is the messages that significant others in these groups, especially initially, the family and later education, and peer groups, give that provides a basis for a positive or negative self image (Yasas, 1993). One can enumerate the various tales of sorrow experienced by victims of rape, women exposed to sexual harassment, domestic violence etc. or women who have triumphed against heavy odds and circumstances, routinely reported in the media, to underscore this point.

1.9 The position of women among various sectors of India

1.9.1 Women’s Rights:

Custom was an important source of law. Two points need to be stressed regarding this source (i) its validity under the smriti law and (ii) its relevancy to casts and tribes who were not governed by the smriti law.

Local customs were held in high esteem and were acknowledged as an important source of law under the smritis. The widely used smriti terms, achara, sadachara, shishtachara, loksangraham, etc., denote
custom. Gautama. Manu, Brihaspati granted special recognition to custom. Narada went further and proclaimed that custom overrides the sacred law. The local customs varied from region to region with the southern states granting women greater rights. Incidentally, it is believed that both Yagnavalkya and Vijnaneshwar (1976), who had expanded the parameters of women’s right to property, hail from the southern (Dakshina region).

The southern and predominantly dravidian regions followed various pro-women practices of property inheritance even under smriti law. The liberal construction of stridhana under the Bombay and Madras schools is an indication. There were also several other lesser known local customs and practices prevalent in this region. For instance, there are many references to women and their use of property in inscriptions in Tamilnadu which can be traced back to the 13th to 14th century AD during reign of Cholas, Pandyas, and Pallavas. The inscriptions indicate that the ownership rights of women included the power alienation through gifts and sales. Some recent studies indicate the prevalence of such a custom in various parts of southern India. A custom of handling over a piece of land to the daughter at the time of her marriage prevailed within the Madras presidency. The income from this land was meant for the women’s exclusive use. This was her stridhana and devolved on the female heirs and passed from, mother to daughter. Known as manjal kani, the land was perhaps meant to provide an independent income to the daughter whom would be sufficient to provide for her personal expenses manjal (turmeric) and kumkum (vermilion) while in her husband’s house. A similar custom of providing a piece of land for the daughter’s personal expenses also prevailed in the Maratha region of Bombay Presidency by the name bangdi choli (which literally means ban house). A woman’s right to one third of property upon her husband’s remarriage was also recognized within certain lower casts of Madras Presidency and was termed as patnibhagam.
Carol Upadhya (1983) in her study of the coastal Andhra region has recorded a practice of giving land to the daughter at the time of her marriage which was known as katnam. As per her observation, this land owned by the women was very distinct from the land owned by the husband’s family and also distinct from the present day north Indian practice of dowry. Even after marriage, traditionally, women continued to exercise control over this land.

In another study of Virasaiva women (1973) from karnataka region, it was observed that twelve per cent women inherited property in the form of land from their mother and this property customarily passed on only to daughters, even when boys did not inherit from their fathers. The lingayat women of Dharwar region, who were categorized as sudras in various judicial pronouncements, also had rights of divorce, remarriage and property ownership. An illegitimate son was recognized as an heir, which is a marker of the status enjoyed by women in informal alliances. The Buddhist literature also indicates that women could own and gift property in their own right.

The main aim of these rituals was to maintain the caste purity through a very strict control over women and their sexuality. Since the woman of the lower castes was relatively free from these notions of purity and pollution, they were governed by the relatively lax code of sexual morality and women held a slightly higher social status. The lower castes or sudras were considered to be out of the varna system and hence they were not governed by the code of the smritis. The code was applicable only to dwijas or the twice born (upper castes) that had the sanction to study the sacred texts.

The women from the lower castes worked and contributed to the household and hence were not totally dependent upon their man. Lower castes practiced the custom of bride price, (kanya sulka), where the father of the girl had to be compensated for the loss he suffered by the marriage
of his daughter. Although the smritis shunned this practice, as it amounted to sale of a daughter, the fact that it is mentioned in most smritis and commentaries indicates its wide acceptance by the various casts in the southern region, northern Himalayan regions and various tribes right up to pre-independence period.

Marriages among the various lower castes were less sacramental and more contractual. The ritual of saptapadi (seven steps round the sacrificial fire, which is essentially a Braminical ritual) or kanyadan did not prevail among these communities. Child marriages were not the norm. The contractual marriages were based on consent of adult women and the rituals and ceremonies reflected this element of consent and contract. The rituals of remarriage of widows and divorcees varied from those of virgin brides. Steele (1991), while recording the customs of the Deccan region mentions an interesting phenomenon. Remarriage of women whose husbands had been absent for a long time was permitted. If the first husband eventually returned, the women had a choice to live with either the first or the second husband, but the husband who was deserted had to be reimbursed his marriage expenses.

A careful scrutiny of the contemporary customs of the various castes reveals the different customary forms of divorce and remarriage prevailing within these communities even to the present day. In the Deccan (Maratha) and Gujarat region, such practices are termed kadi mod (literally, breaking of a twig symbolizing the termination of the relationships). If the process is initiated by the women, either she or her father would have to return the bride price and also a part of the marriage expenses. The practice of maintenance after divorce is not prevalent among these communities. This is perhaps doing not possess property, resources or a steady income upon which the women can lay their claim to maintenance. Also divorced women are accepted within the natal family and a subsequent remarriage or an informal alliance is not unusual.
The custom of divorce and remarriage was also prevalent among Lingayats of Karnataka, Kapus of Telengana, the Jats of Punjab and Ajmer, certain castes among the Maravars, Namosudras of Bengal and the Banias of Bihar. It was also accepted as a universal custom in the Darjeeling and Manipur regions. The prohibition to divorce and remarriage of widows and divorcees existed only among communities, who emulated the Brahmins in order to rise in social scale. As a community progressed economically, it took on Brahminical practices and exercised a stricter sexual control upon its women.

Among various castes and tribes, along the Malabar Coast, there were female-headed joint family households and matrilineal inheritance patterns. Of these of Marumakkathaym and Aliyasanthana received judicial recognition during the British period. The female-headed joint families were called Tarwad and Tavazi and the line of descendents was traced through the female line. These systems were in existence until recently (1999) and were brought to an end through specific state intervention in the form of legislations in the post-independence period. Under these systems, the women contracted loose marriage alliances which were called sambandham, which could be easily terminated with the consent of both the parties. Since property devolved along the female line, there was no premium on the sexual purity of these women.

From the above discussion it is evident that even a casual glance at the customs of the lower castes is sufficient to indicate an absence of a strict women’s code and correspondingly, a wider scope for negotiating women’s rights of divorce, remarriage and property ownership among them.

1.9.2 An Amorphous society of women and law

If communities practiced such diverse norms of marriage, divorce, remarriage, property ownership, notions of legitimacy and illegitimacy
then, for the purpose of administering the Hindu law, who is a Hindu, becomes a central issue. The question has baffled the judiciary for well over a century and has continued to be illusive to the present day. It is question of affiliation to religious institutions as a Europea Christians understood the term or a far more complex phenomenon paves way to law of women.

While contextualizing the Hindu Law laid and its diverse practices, it is necessary to highlight that the term ‘Hindu’ is not located within the smritis. It is derived from ‘Indoi’, a term used by Greeks to denote the inhabitants of the Indus valley. The first known use of the term to denote the community was in 1424, by Krishnadevaraya II in a plate Satyamangala, to distinguish themselves from the Muslim rulers. The Portuguese referred to the ‘natives’ as Gentoos which is derived from the word gentiles indicating non-believers. The initial regulations of the East India Company also used the same term to denote non-Muslim natives.

In the pre-colonial era, divers local customs were administered by family or caste councils or Village panchayats, which were termed as ‘kula’ (family or tribe), shreni (artisan’s guilds), and puga or gana (assembly or association). These local panchayats which were none state legal for the regulated civil life and family relationships. These local councils co-existed along with the royal courts sabhas and samitis where the king administered justice according to the school or authority accepted in the area with the help of Brahmin Pundits. It was an accepted norm that territorial conquest did not lead to tampering of local customs. During the Mughul rule, although the Muslim rulers introduced the Islamic criminal courts, they did not interfere with the local customs and civil laws. Hence, during this period civil laws continued to be regulated by local customs and usages.

At various historical points, when the Brahmínical hold over the scriptures became oppressive, several religious and social reform
movements challenged the Vedic orthodoxy and Brahimical hegemony and formed various religious sects i.e., Buddhism, Jainism and Sikhism, Viirashaisism, the Bhakthi Movements, the social reform movements during the nationalist struggle etc. A common thread which runs through this entire reformist religious is their revolt the dominance of rituals, the supremacy of Brahmans and the Sanskrit language. In retaliation, the reformers preached in the language of the common people (the lower castes). Like the smritis, their preachings were also codes governing social relationships. i.e., denouncement of the caste hierarchies and concepts of purity and pollution laid down by smritis, simple forms of marriage, divorce and remarriage, an elevated status for women and the lower caste as preachers, peaceful co-existence based on the principle of non-violence etc. some sects like the sikhs preached monotheism and some ever aestheism. But conversion did not necessarily entail a change in property regulations. The institution of property and religious affiliation were not coordinate. So although people converted to different religious, faiths and sects, they continued to follow the local customs and usages regarding property devolution.

As far as property was concerned, the law of the land was binding. Laws and customs applied to people locally, regionally and along family, trib (or caste) and trade divisions. Hence, it is not surprising that there was greater similarity between customs and usages (as well as language and traditions) of people from a region irrespective of their religious faiths and affiliations, rather than between followers of a religion living in far flung regions. The Malabar region and the north eastern tribal belts provide concrete examples of this. On the Malabar Coast, not only the Nairs, but also the predominantly Muslim population of the Lakshadweep Islands of around 99 percent, follow the matrilineal system of Marumakkathayam. The Khasi, Jaintia and Garo tribes of north-east region who converted to christianity continue to follow the matrilineal inheritance. The Khojas,
Cutchi Memons, the Bohras and the Halai Memons, who were converts from the trading communities of Gujarat, followed the Hindu custom of joint family property, based on male coparcenary.

The system of dividing the communities on the basis of their religion and applying to them their own ‘divine law’ disregarding their caste, tribe and race differences is of recent origin, introduced by the British. The British administrators tried to introduce concept of institutionalized religion with clear affiliations along the lines of Christian church fellowships and subordinated the institution of property to it. The Indian sub-continental trend for all over 2000 years, right from Buddha and Mahavir around 500 BC had been to gravitate away from the structure of Brahminical superiority and Sanskrit orthodoxy. But the new colonial structure reversed the trend and subjected communities to the dominance of the smriti rules.

Since there were sharp differences in the customs and practices of Aryan and non-Aryan communities, the British system of deciding cases on the basis of a ‘divine and ancient Hindu Law’ caused a lot of confusion and hardship. Whether Dravidians and other non-Aryan races should be brought into the pale of Hinduism through the application of the shastric law of Aryan origin was a highly contested issue. Whether the reformist sects, who had protested against Brahiminical orthodoxy, ought to be governed by the same Vedic law which they had renounced was another disputed question. Several aboriginal tribes also challenged the application of shastric Hindu law to them. It is through this process of litigation over property disputes that the sharply dine community of Hindus governed by the present day Hindu code was constructed during the colonial regime. The diversity of the communities to whom the Hindu law was made applicable Led Derrett to comment as follows; ‘The Hindu are as diverse in race, psychology, habitat, employment and way of life as any collection of human beings that might be gathered from the ends of the
earth’. The Brahminical smriti rule of marriage and property ownership were applied to people who could hardly be called Hindus and controversially, since the Hindu law was applied to them, these communities were termed as Hindus. Although, the ground for the construction of a Hindu community was laid during the colonial rule, this perceived homogeneous religious community of the Hindus was given the final seal of statutory recognition only in the recent past, when the ‘Hindu Law’ was codified in the post-independence period. By then the dilatory measures adopted by the courts had reached such a scale that it was easers to indicate a Hindu negatively, i.e., a person who is not a Muslim, Christian, Parsi or Jew.

A precise meaning of the word ‘Hindu’ has defined all efforts at definition through statutes or judicial pronouncements. An attempt to define the term was made in 1966 by the Supreme Court in Shastri Yagnapurushadsji and Muldas vaishya. Acceptance of Vedas with reverence, recognition of the fact that the means of ways to salvation are diverse and realization of the truth that number of gods to be worshipped is large in the distinguishing features of the Hindu religion.

Relying upon this definition, the court held that the satsanghis are Hindus. The issue before the court was one of the social justice, i.e., entry of Harijans to a temple belonging to the Satsanghis of Swaminarayan sampradaya (sect). The Satsanghis pleaded that they were not Hindus and hence were not governed by the pre-constitution temple entry-legislation of the Bombay presidency through which Harijans were granted the right to worship in a Hindu temple. By the time the judgment was pronounced, the courts were under the constitutional mandate of equality; whether the Satsanghis are Hindus had become irrelevant and was only of academic interest.

According to Paras Diwan, instead of religious sect, had it been argued that chamars were not Hindus, the court would have faced an
uphill task. It would be problematic to define a community like the chamaras, who apparently know little of Hindu religion and less of Hindu philosophy, as Hindus.

Under the present day statutes governing Hindus, any definition of Hindu in terms of religion will be inadequate. A person, who practices or professes it, is a Hindu. But a person does not cease to be a Hindu, nor become less of a Hindu only because he/she does not have faith in Hindu religion/philosophy or does not practice or profess it. Even when a Hindu starts practicing, professing or having faith in a non-Hindu religion, he/she will not cease to be a Hindu unless it is conclusively established that he/she has formally converted to that faith. Even ashiest does not cease to be a Hindu.

So, the present day Hindu community governed by the ‘Hindu Laws’ with their Brahminical tilt and an Anglo-Saxon base is more a legal fiction than a religious entity or a social reality. In effect, it was an attempt to impose an alien and higher caste system of law upon a pluralistic society.

1.9.3 Evolution of Islamic Law and Women’s Spaces within it:

The Islamic law is of later origin than smritis and also lays greater claim to divinity. Despite his claim, its evolution is not through a process of continuous revelations but through a rational method of interpretations. A similarity can be traced between the smriti law and the Islamic law regarding the various schools and sects which flow from the original text which have led to plurality of practices. In this chapter, the origin and development of Islamic law, its entry into the Indian subcontinent, women’s rights under the Islamic jurisprudence as well as the later reforms are briefly sketched.

1.9.4 Origin and Development of Islamic Law:
Islam means peace and submission. The Shariat is the central core of Islam and is an infallible guide to ethics. But this is not law in the modern sense. The jurisprudential law is called Fiqh. According to Fyzee, this is the name given to the whole science of jurisprudence. It is the knowledge and obligation derived from the four sources of Islamic law, the Koran, Sunna, Ijma and Qiyas. The Koran which is the divine revelation (the word of God), is the highest source. Compiled from memory after the prophet’s death from the version of Osman, the third Caliph, it contains about six thousand verses but not more than two hundred verses deal with legal principles and only eighty verses deal with law of personal status. The Caliphs, as the prophet’s successors, took up the responsibility of adjudication of disputes among the people and while drawing upon Koran, they continued the application of the ancient Arab system of arbitration and customary law.

The second source of Islamic law is Sunna or tradition. The word ‘sunna’ means trodden path, initially, the term was applied to the custom and practice of pre – Islamic tribes and the Muslims of 7th century AD. But later the word denoted the practice and precedents of the prophet-Hadis. As a source of law, Hadis is as binding as the principles of the Koran. By the 18th century, Sunna became the ideal and established doctrine of the ancient schools, expounded by its representatives. Hence, in the present context, Sunna could either mean the living tradition of the schools or the traditions of the prophet.

The third and equally binding source is Ijma, which is an agreement among legal scholars of any generation. This was supported by the Hanafi doctrine that the provisions of law must change with the changing times and of the Maliki doctrine that new facts require new decisions. In developing Islamic law by consensus, the doctrine of Ijtihad was developed. Ijtihad means one’s own reasoning to deduce a rule of shariat law. With the passage of time, liberty to reason was restricted and
by 19th century Ijtihad was considered as the privilege of great scholars of the past.

The last source of Islamic Law is Qiyas which is reasoning by analogy. It does not involve laying down new principles but is merely a rule of interpretation. A principle laid down in the text can be applied to another situation, if it can be demonstrated that the rule laid down in the text governs the situation at hand by applying logic or reasoning, though the language of the text and the situation at hand are not strictly the same. It became a source of law as a sort of compromise by the Shafii and Malik School. The Fatawas (legal opinions of scholars and judges), though not a source of law, have been instrumental in the development and enrichment of legal principles.

There are two broad sects of Islam, the sunnis and the shias. The four recognized schools of Sunni law are Hanafi, Maliki, Shafi, and Hanbali. The Hanafi school founded by Abu Hanifa (699-767 ad.), has a wide following. The school is the dominant majority the founder of shia school is imam jafar. The most important among the shia schools of law are Ithna and Ismaili. The Ismaili sect of Shia school is the dominant majority in Persia. Elsewhere, they are generally in a minority. In India, Bohras and Khojas are shias belonging to the Ismaili sect.

The main difference between the shia and sunni sects is the doctrine of Imamat. According to the Sunnis, the leader of Muslims is Khalifa, the successor of the prophet, who is a temporal and political ruler rather than a religious chief. For religious matters they must follow the shariat. The institution of the Khalifat as abolished in 1924. According to the shias, Imam is the final interpreter of the law on earth. He is a leader not by the suffrage of the people but by divine right as descendent of the prophet. Some shia sects like the Dawoodi Bohras originated as an outcome of a rebellion against the oppressive sunni technology in and around 18th century BC and were considered to be reformative and emancipator.
The laws of the two main sects and their sub-sects vary a great deal from each other. Among the various schools, the Maliki School is the most favorable to women and the Shafi School comes next. Under this doctrine, a wife was an option to dissolve her marriage on the following grounds: cruelty, non-payment of maintenance, absence of husband, insanity, leprosy, castration, and sexual malformation.

1.9.5 Introduction of Shariat law in India:

Islam came to India through the trade routes of the Arabs via the Arabian sea. Some of these traders settled down along the Malabar Coast in 18th century and adopted the local customs and practices (Mopillas of kerala). They did not follow the Shariat law.

The shariat was first introduced to the sultanates of Afghan and Turkish rulers and entered India around the 12th century AD. The Muslim sultans who invaded India were Hanafis. They relied upon the Ullamas to be the religious and legal arbitrators. The new sultanates followed basi law of Islam, the shariat, as interpreted by the Ullama in the royal courts. The Moghul emperor’s were Hanafis and the Qazis appointed by them administered the Hanafi law. It is through this channel that the shariat was established in India. The textbooks of Hanafi law are based on Fatawa Alamgiri, which is a collection of Fatawas compiled during Aurangzeb’s regime and the Hedaya (the guide).

The Muslim society as it evolved in India fell into three broad categories, the nobility, the peasantry and the artisans. The Muslims population of the towns consisted of artisans and traders. Among the artisan classes, there was great assimilation between Hindu and Muslim rituals, ceremonies and customs.

There were many instances of the converted Muslims following their earlier non-Islamic norms and practices. The Islamic law of pre-emption crept into Hindu customs and practices and came to be accepted as part of Hindu law. The population in the villages, both Hindus
as well as Muslims followed their own local laws and customs. The Bhakti and the Sufi movements of the 14th century, which were based on egalitarian principles of equality and love in opposition to the strong hold of religious orthodoxy and caste hierarchy, helped to bring further assimilation between the lower strata of Hindu and Muslim communities. At the advent of colonial rule there were several amphibious communities which could not clearly be distinguished as either wholly Muslim due to the intermingling of their laws, customs and practices. The case of the Khojas, Cutchi Memons and other converted Muslim trading communities of Gujarat who followed the Hindu joint family system of property devolution and the matrilineal practices of the Mopilla community of the malabar coast. There were several other communities like the meos of Rajasthan and the Satpanthis of Madhyapradesh whose legal identity raised difficult questions of law. The satpanthis and Pripanthis of Gujarat, Cutch and Khandesh were by caste Matia Kunbis. They followed the Atharva Veda and worshipped the tombs of Muslim saints. They observed some Islamic practices like fasting during the holy month of Ramadan and repeated the Kalima. They buried their dead both Hindu and Muslim prayers.

In a rather recent case, the disputed issue was the right of females to inherit property. In an effort to deny females the right, it was pleased that Meos folloe Hindu family law and hence women have no right to inherit property. Over-riding this premise the court held that Meo Mewati community is Muslim and is governed by Mohammedan law. Hence, daughters cannot be denied a right in the property in the absence of a conclusive proof of a custom to the contrary. A curious trend in the litigation of the pre-independence period was for the females to plead the cover of the Mohammedan law while the opposing patriarchal subversive forces could be aided by a plea of customary Hindu practice of property devolution.
According to R.H. Hutton (1968), such an interesting illustration of the co-mixture of Hinduism and Islam was not restricted only to western India. He observed that at times great difficulty existed in deciding whether a particular body of people is Muslim or Hindu.

Our constitution provision created a favorable atmosphere for women and inspired some of them to aspire for highest offices in the country. At the same time problem of crime against women is not new. Women in Indian society have been victims of humiliation, torture and exploitation as long as we have had written records of social organization and family life for birth to death. There are many records of episodes like.

i) Female feticide  
ii) Female infanticide  
iii) Girls misuse of prostitution  
iv) Kidnapping  
v) Hijacking  
vi) Abduction  
vii) Rape  
viii) Wife Battering  
ix) Harassment  
a. Dowry harassment  
b. Marriage harassment

4. Domestic violence  
a. Domestic murder  
b. Domestic conspiracy to murder  
c. Domestic culpable to homicide  
d. Domestic abatement to culpable homicide  
e. Domestic false representation  
f. Domestic cruelty

5. Assault
a. Physical
b. Mental
c. Economic
d. Social

6. Suicide
7. Abatement to suicide
8. Indecent representation of women
9. Abuse
10. Domestic abuse
   a. Domestic abuse
   b. Physical abuse
   c. Mental abuse
   d. Outraging modesty of women
   e. Economic abuse
   f. Social abuse
   g. Sexual abuse

11. Sathicide
12. Women death syndrome
   a. Hanging
   b. Poisoning
   c. Bride burning

### 1.9.6 Indian women’s socio-legal problems:

It's been over sixty years since our country gained independence, but Indian women are still not allowed to move independently. Though woman is worshipped here as Goddess here, people can't just restrain from committing atrocities against them. Women here experience many hardships at various places right from home to working places. India has an elaborate laws to protect the rights of women, including the Prevention of Immoral Traffic, the Sati (widow burning) Act, and the Dowry Prevention Act. Women and children have figured prominently in the government's agenda of social reforms and initiatives.
However the Government is often unable to enforce these laws, especially in rural areas where traditions are deeply rooted. Dowry, Female bondage and forced prostitution are widespread in some parts of India. Many obstacles to the realization of women's human rights in India are social and cultural in nature, deeply rooted in the traditions of its communities.

1.9.6.1 Dowry:

Dowry system in India is actually illegal according to the laws. But the laws imposed have not removed the curse of the system completely. A girl’s family is forced to give some amount of money or gold while she gets married. Whatever may be the lump sum amount given, the in-laws are never satisfied and once the girl enters their house, they torture both the girl and her family, insisting to give them more dowry. Although all the cited problems occur frequently, very few are reported.

1.9.6.2 Wife Beating:-

The biggest of all crimes against married woman is wife-beating. It is regarded the biggest crime next to rape. Several incidents have been reported in which wives were burnt alive or killed by some other means by their in-laws and husbands. But, the reported cases form only a miniscule of the actual number and the jurisdiction seems to be too slow in taking actions. There are programs creating awareness among people about crimes against women, but we cannot change someone unless he wishes to do so. Changes should be done starting from the individual level. The biggest curse of our society is that it is dominated by a pack of male chauvinists, who can't just accept that women are also human beings. Unless these people try to change their minds, this society cannot prosper.

1.9.6.3 Bride burning:-

There is also the problem of bride burning. Many married women commit suicide by burning themselves because they cannot not bear the tension and the strain that they and their parents are put through by their in-laws and sometimes by their husbands demanding dowry in the form of a flat, car or cash in return for marrying them. Sometimes the in-laws
themselves proceeded to burn the woman. The government had made the acts of receiving and giving dowry criminal acts but still dowry as a social evil exists. In the 1980s numerous cases of newly married brides mysteriously dying in kitchen-stove explosions came to light in India. The deaths were found to be related to the dowry system when the bride is expected to bring a lot of money to the husband. The burnings consisted both of suicides and murders.

1.9.6.4 Raping:

The incidence of rape also remains high. This also highly practiced in rural India. The upper caste peoples in India forcefully rape the lower caste women’s. But according to the local customs and laws sometimes issuing small amount of penalty for the Panchayat as well as the victimed women. Though the government enacted the the stringent laws against rape most of the victimed womens not willing to lodge the complaints against the culprits due to fear and family constraints. One hears frequent newspaper accounts of rape of a lower caste woman by upper caste men in some rural area. In 1992, the rape of Bhanwari Devi a social worker from Rajasthan hit national headlines.

1.9.6.5 Eve Teasing:

There is also the problem of eve-teasing especially in big cities like metropolitans. Everyday thousands of women who go to work, colleges and to other areas have to contend with this problem. As someone who has firsthand experience of the problem that this most degrading and humiliating experience. This problem is not restricted to some women but transcends women of all ages and class. Even older married women have been subjected to this kind of treatment. It is heartwarming to note that women are hitting back against such people with all they have. There is also a need for stricter laws in dealing with the problem.

1.9.6.6 Child Marriages:

Many people marry their daughters in childhood to escape from dowry, and pre-puberty marriage is an evil in itself. On maturity, the boys may or may not be able to adjust with their wives. This crisis situation is by no means left behind after the child marriage is
consummated on attaining maturity. If by chance a husband becomes educated or professionally trained and his wife remains uneducated, both partners face crises.

1.9.6.7 Discrimination at Workplace:

However, Indian women still face blatant discrimination at their workplaces. A major problem faced by the working women is sexual harassment at the workplace. Further, women employees working in night shift are more vulnerable to such incidents. Nurses, for example, face this problem nearly every day. There is nothing that is done in hospitals to tackle and address the danger they face. Such blatant disregard of current Indian laws is one reason why sexual harassment at the workplace continues to increase.

Also, Indian women are often deprived of promotions and growth opportunities at workplaces but this doesn’t apply to all working women. A majority of working women continue to be denied their right to equal pay, under the Equal Remuneration Act, 1976 and are underpaid in comparison to their male colleagues. This is usually the case in factories and labor-oriented industries.

1.9.6.8 Divorce:

Today, divorce is becoming common in India but unfortunately society’s attitudes are not changing fast enough. Indian society looks harshly upon divorced women, invariably blaming them for the break-up. Divorce is becoming common in India now and in certain classes of society single women are going in for adoption. Sadly however, women who live alone are still considered oddities. Though it is still looked upon as a social evil, the law permits a couple to separate ways on mutual grounds. Also Indian women have their own rights to file for a divorce if not treated well. Even though we observe that women are ill treated in our country in rural as well as urban areas of India; a very small percentage of women who initiate for separation. But more and more social activists and social agencies are creating awareness about the laws and rights available to women.

1.9.6.10 Female infanticide:
In rural areas where a lot of people do not have access to sex determination facilities, female infanticide is shockingly common. The parents wait until the mother gives birth, and when they find out that a daughter is born, they go ahead and kill the baby by adopting various means such as strangling the baby, giving her poison, dumping her in a garbage bin, drowning her, burying her alive, starving her, stuffing her mouth with salt, or leaving her outdoors overnight so she dies of exposure.

Although disclosing the gender of a fetus is illegal, there are numerous doctors in cities that disclose the child's sex for an enhanced fee, and then offer to arrange for the abortion. Thus although there is a good law in place, its implementation is not as effective as it should be.

Five million girls were eliminated between 1986 and 2001 because of fetal sex determination done by unethical medical professionals. The rate of extermination continues has been increasing after census 2001. Sex determination and sex selective abortion was traced to an Amritsar clinic in 1979 and has now grown into an Rs.1000 -crore country wide industry. Today reports of female fetuses found in drains or dug from dry wells or floating in lakes or eaten by dogs are headline news.

**1.6.9.11 Strategies of Reform:**

The genesis of the demand for uniform women laws is situated within the women’s movement of the pre-independence era within the larger context of the national struggle. The All India Women’s Committee (1999) was an active protagonist of this demand and placed the issue of gender within the political agenda. This led to some enactments during the thirties securing women’s rights within marriage.

In 1940, the National Planning Committee, while focusing upon the economic dimension of women’s rights, resolved that in a planned society, women’s place shall be equal to that of men and to achieve this recommended the enactment of a Uniform Civil Code. During
the initial phase, the UWC was to be an optional code which could gradually replace the different personal laws followed by various religious communities. This position seems to have continued till the draft for the UWC was presented at the convention held by the Bar Council in 1986(UWC M.R.Masani).

Later, during the constituent assembly debates, the focus shifted from gender equality to national integration. The demand for UWC was seen as a corrective measure for the divisive colonial policies. Integration of communities in the modern state was sought to be achieved through uniformly of personal laws. While pressing for setting a timeframe for the enactment of a UWC M.R.Masani, Hansa Metha and Rajkumari Amrit kaur bemoaned the continuance of personal laws as keeping India back from advancing to nationhood. The proceedings of the constituent Assembly show a marked absence of discussion about the significance of a UWC for women. The issue of women’s rights seems to have been subsumed beneath graver political concerns of building a modern state. There was also a presumption that a modern state would automatically ensure gender justice.

During the subsequent decades, the issue was further problematized by judicial comments. While examining gender bias within the Muslim personal law, the courts have explicitly commented that oneness of the nation as well as loyalty to it would be at stake if different minority groups follow different family laws. It is a matter of debate whether a Uniform Civil Code will ensure national integration and communal harmony. But the comments have enabled the communal forces to appropriate the demand. This appropriation has posed insurmountable obstacles in the path of family law reform from the perspective of gender justice. To counter the communal propaganda, some scholars, in recent times, have differentiated between a uniform civil code and a common civil which would only ensure commonality of oppression. But this
differentiation between the words ‘common’ and ‘uniform’ appears to be rather stretched.

The root of the communal propaganda is centered on the growth in the Muslim population. As per this premise, non-implementation of Art.44 of the constitution has resulted in growth of Muslim population and this constitutes a danger to the majority community. The image of a polygamous Muslim has been constructed to serve this propaganda. It is in this context that monogamy imposed by a compulsory code becomes the need of the hour. The gains to the gender concerns by the imposition of monogamy seems to be only incidental. Muslim scholars have countered this with statistical data and focused upon sociological factors such as poor socio-economic conditions and low level of education among the Muslim which are the root causes of a slight increase in Muslim population and pointed out that a UWC will not resolve this problem. But the doctrine of monogamy also draws the unquestioning support of liberals mounded in the western ethos. Here bigamy is effective or pre-modern barbarism and monogamy symbolizes civilization, enlighten, modernity and progress.

Within the context of identity politics, a support to the demand of a Uniform Civil Code is being construed almost as a betrayal of the community not only by the religious leadership but also by secular and progressive sections of the community. The shift in the trend can be gauged by the response to the Tilhari Judgement on the triple talaq and the Supreme Court verdict on conversion and bigamy. The obvious reference to Muslims in respect of partition and two nation theories in the case concerning Hindu bigamy have also evoked critical comments. The secular Muslim response to these comments has been ‘those who stayed in India had a right to remain here as they were citizens of this country. This does not grant the state the power to deny Muslims a right to a separate cultural identity.
It is within this restricted sphere of communalized ambience that reforms from within assuming significance. This course upholds the principle imperative to a democratic polity that culturally distinct communities must be granted a degree of autonomy to exist alongside a majority nation. The trends within non-Muslims minorities in this direction have already been discussed in the preceding chapters. But since the issue of UWC is locked within the binaries of Muslim minority and Hindu majority, the efforts by Muslim intelligentsia and pro-reform organizations become important markers in this discourse.

Parliament on Monday 29/8/05 passed a bill giving Hindu women equal rights in inheritance of property with the Lok sabha approving it by a voice vote. It was passed by Rajya sabha on August 16 itself. This is a part of measure to remove a gender bias by giving equal rights to daughters as son had. But Indian women will get equal claim in the inherited property only after extending the legislation to women from all sects and not restricting rights to Hindus alone. Andhrapradesh chief minister N.T Ramaraao brought this measure in 1986 that lead light to our nation.

1.10 Why women need extra protection through Law:

Crime against women is not new. Women in Indian society have been victims of humiliation, torture and exploitation for as long as we have had written records of social organization and family life. There are many records of episodes like abduction, rape, murder and so forth of women. But significantly, female victims of violence have not been given much attention in the literature of social problems or in the in the literature on criminal violence. Nor has any attempt been made to explain why both the public and the scientific communities alike ignored for so long the varied evidence that women were being greatly exploited in our society.
The attitude of indifference and negligence can be attributed to three factors; a lack of awareness of the seriousness of the problem, the general acceptance of man’s superiority over women because of which violent acts against women were not viewed as violent or deviant, and the denial of violence by women themselves due to their religious values and social attitudes. As the cases of wife-battering, rapes, kidnappings and abductions, intra-familial murders, and dowry-deaths, and so on, are being more and more reported since the late 1960s and 1970s; the issue of violence toward women has been transformed from a private issue into a public problem.

Sociologists in the west have started taking an interest in social problems like sex and female exploitation ever since they shifted their perspective in order to consolidate their appreciation of social dynamics. Likewise, criminologists, particularly radical crime scientists, have started taking an interest in problems such as criminal violence against women ever since they started a reappraisal of the old assumptions underlying certain crucial socially-problematic behavior. This shift has had profound consequences in research and theory building. It has become increasingly difficult to sustain the notion that criminally, specifically male criminality is a behavioral quality monopolized by a narrow section of the lower class. However in India both sociologists and criminologists have yet to develop an interest in this crucial problem of deviant behavior. They have yet to realize their academic responsibility; in fact they have easily avoided the evaluation of social and legal norms and the underlying morality of a society that criminalizes activities, which have developed out of the contradictions in social values and its sub systems.

1.11 Global scenario of women and law:

Women at American society and at western culture are also facing women’s assault syndrome due to women harassment. Since 1945
Albania has undergone a rapid and revolutionary change. At that time Albania was an economically backward country. The traces from the ancient Muslim culture were obvious. During the last 10 years the country has been totally restructured from a feudal agricultural society to a modern industrial agriculture one. The political system could be described as orthodox Marxist, but with a particular Albanian character. How is this rapid change manifested in women’s position in the society and in women’s and men’s behavior and attitude towards marriage and family etc to develop society.

The impact of societal changes on women’s position in the society, and on attitudes towards marriage and family, has been one of the main concerns of the sociology of family during the last decades (Bell 1972; Hoffman and Nye 197; Berger and Berger 1983; Harris 1983; Goody 1984; Morgan 1985). This focus has mainly been on the western family. However, cross cultural studies have also paid attention to the family and women in the developing countries, and sometimes also in the east European countries. The Albanian setting is rather unknown to western scholars. This also applies to women’s position in the society and to women’s and men’s attitudes towards marriage and family.