CHAPTER I

INTRODUCTION

J.S. Mill observes¹:

"Experience does say that every step in improvement has been so invariably accompanied by a step made in raising the social position of women, that historians and philosophers have been led to adopt their elevation or debasement as on the whole surest test and the most correct measure of the civilization of a people or an age."

Sir Henry S. Maine observes²:

"It has been said that the degree in which the personal immunity and proprietary capacity of women are recognized in a particular state of community is a test of its degree of advance in civilization ...."

These assertions reflect the universal truth about women's secondary position in society. Why is it said that the best ways to understand the spirit of a civilization and culture and to appreciate its excellence and realize its limitations, is the study of the position of women in it? Why is that the advancement of a society is to be measured in terms of improvement in the status of its women? Why is never man's position considered as a criterion for deciding the advancement of society? The man always being superior, how much progress an inferior species i.e. woman has made, obviously becomes the test for advancement. Therefore, the above quotations are based on the hypothesis that women are subordinate to men. They are denied equality with men. India is no exception to this universally existing phenomenon.
However, realizing the problem of the subordination of women and also of other oppressed groups and the consequent injustice, and in order to overcome it, the Constitution of India enjoins upon the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life. The Constitution does not merely prohibit discrimination on the ground of sex but also empowers the state to make special provision for women.

To attain these national objectives, the Constitution guarantees certain Fundamental Rights and Freedoms to men and women equally. Art.14 ensures "equality before the law" and Art. 15 prohibits discrimination on the basis of religion, caste, sex etc. However, inequalities inherent in our traditional social structure based on sex, caste, religion etc., have a very significant impact on the status of women in different spheres. Socially accepted rights and the expected roles of women, the norms governing their behaviour and of others towards them, have always been based on their lower status. In a patriarchal form of society, where the male dominance prevails, the result is bound to be so. Naturally, women have become an oppressed group and a disadvantaged section of society. Realizing this, the Constitution empowers the State to make special provisions for women. In pursuance of these Articles, a number of social legislations have been passed to ameliorate the conditions of women. A mere survey of such social
legislations pertaining to women and their rights, would indicate that a lot of change has been brought about in the status of women after independence. However, there is a schism between the normative law and the law in action. Reform in the law does not always make the desired impact because of the societal unpreparedness to accept these goals and means. In respect of the status that is accorded to women by law and by the Constitution, there is a gap between theoretical propositions and their actual realization. This is nowhere seen as tellingly as in the case of the laws intended to ameliorate the status of women. To illustrate, the Hindu Marriage Act, 1955 abolished polygamy for Hindus, however, polygamy still persists among Hindus. It has been found that polygamy among Hindus is more than its incidence among Muslims for whom polygamy has yet not been legally abolished.8

Though, the Indian polity and the Constitution accept the principle of equality, the Indian Society observes a sharp distinction between man's sphere and woman's sphere and between masculine roles and feminine roles. Woman is primarily associated with the home and man with the outside world. As home-makers women are expected to look after domestic chores and men are expected to earn money to sustain the house. However, after the second world war, there was a change in the traditional role of women. They started working with men in the outside world. The economic necessity which brought middle class women into working life had a profound impact on societal value system. Women's
education also expanded. However, in spite of the equalitarian provisions of the Constitution, inequality continues in a number of spheres including employment and education. The number of working women is very small in spite of the constitutional guarantee of equality of opportunity, in the work force of the country. The import of new technology further marginalises women from active participation in the productive processes. They are subjected to subtle discrimination in the organised industry. Their work is under remunerated and undervalued. Many of them are subjected to exploitation of various kinds. The conditions of women who work in the unorganized sector are worse. The result is, even today majority of women belong to the 'Housewife' category. The household work is neither respected not treated as productive or gainful work. Women are dependent on the male member of the family for their sustenance. Family socialisation internalises the self image of subordination. She is always taught that marriage is the only and ultimate objective of her life, which will provide security throughout her life. To support her is an inherent marital obligation of the husband. Consequently, woman's education has low priority and she remains and is also expected to be dependent on man. Thus self respect can never become a value for her.

All goes well so long as marital life is smooth. Her subordination and inferior economic position remain invisible during the duration of the marriage. But as soon as marital relations are broken, it becomes immediately visible.
On marriage breakdown, she is forced to leave the matrimonial home. Lack of shelter and lack of livelihood are her immediate problems. Her economic dependence has a direct correlation to the right of maintenance. Her economic dependence makes her destitute, indigent and helpless. The law comes here for her rescue and compels the husband to pay maintenance to her. The provision of maintenance is a legal method of giving relief to her in such a situation. The traditional function of the law of maintenance is to enforce support for the abandoned or divorced wife whom the abandonment or divorce has deprived of the security and support inherent in the matrimony. There should also be an aspect of providing compensation to the wife for her contribution to the family. However, in reality this aspect is rarely taken into consideration. What provoked us to undertake the study of law relating to maintenance and position of women vis-a-vis it, is the precarious condition of women who after being abandoned, seek the remedy of maintenance. There are several impediments to their pursuit of legal remedy. We came across cases of such women in the legal aid centres as well as in Legal Literacy camps organised under the Legal Aid Programmes. Our such experience helped us to learn how the law in action differed from the law in statute book. That's why we decided to study how the evolution and development of the law of maintenance took place. Are the provisions of the law satisfactory?; how does the judiciary apply these provisions in practice?; what is the attitude of the judiciary towards
the whole issue of women's economic dependency on men?; and is the law of maintenance really doing any justice to women? These and some other related questions are proposed to be answered in this thesis. Our answers are, of course, based on the limited experience and study undertaken here.

The law of maintenance presupposes the intimate personal relationship between the obliger and the obligee. In India, personal relations are governed by personal laws based on the different religions. Consequently, the laws of maintenance are also different for people belonging to different religions. The scope of the study is confined to the problem of alimony and maintenance only between the spouses inter se. Initially, we thought of studying the women's position with special reference to maintenance which would have covered daughter, widow, mother, daughter-in-law also. But as we proceeded with the work, we concentrated only on the wife's (ex-wife also) right. We realised that otherwise the work would have become unwieldy. The question of the support and maintenance of the female relation of daughter, widow, mother or in-laws is therefore excluded.

We studied the provision of maintenance available under the matrimonial laws viz. the Hindu Marriage Act 1955; the Parsis Marriage and Divorce Act 1936; the Indian Divorce Act 1869; the Muslim Personal Law and the Special Marriage Act 1954.

Apart from these matrimonial laws, we also studied the

In developing societies, like ours, where the law is used for bringing about social reform, the judiciary also has to play a very significant role. An analysis of the judicial decisions pertaining to the law of maintenance, thus became necessary to understand the attitude, approach, role and contribution, if any, of the judiciary. Therefore, along with the analysis of the provisions of the law, we tried to analyse the decisions of the High Courts and the Supreme Courts.

To support the doctrinal thesis, we wanted to study the actual functioning of the law at the grass roots level. The decisions given by trial courts are final decisions for majority of the people, as they do not prefer an appeal. Moreover, the trial courts' decisions on facts are final unless the higher courts overturn them on the ground that the findings are perverse or without any evidence. The trial court has the benefit of hearing and seeing the parties, witnesses and others factual evidence. Their perceptions are therefore very relevant. Therefore it was thought that their perceptions of women's problems, their attitudes etc. could be gauged through their decisions. At the same time we also wanted to study how these trial courts function as a system; how far their working facilitates the getting of justice by destitute or rejected or dependent women? Therefore an empirical study of the decisions of these courts and their working operation would be meaningful. The decisions of
these trial courts are not reported. In fact the law does not permit them to be reported. The bulk of the unreported cases is really the law for majority of women. Hence, we undertook an empirical study of the cases decided by the District Court, Pune. This empirical part of the thesis is the behavioural study of all those who are involved in the maintenance provision. It is submitted that this empirical part of the thesis constitutes its major contribution. The purpose of the earlier chapters is to give a general background about women's position in India, under Family law and the legal provisions affecting their right to maintenance with judicial analysis and interpretation. The effort is made throughout the thesis to do a comparative work with reference to women's position under different personal laws. This doctrinal analysis provides the support base for the empirical study undertaken hereafter. At the end, the necessary reforms in the existing system to improve the law of maintenance are suggested which would help in doing real justice to women.
Notes


3. Art. 38 of the Constitution of India.

4. *Id.*, Art. 15(1).

5. *Id.*, Art. 15(3).


14. Sec.22 of the Hindu Marriage Act, 1955, which prohibits publication of trial court decisions and act contrary to it is punishable with fine.