CHAPTER II

PART - I

AN OVERVIEW OF THE POSITION OF WOMEN IN INDIA:

In order to have a better understanding of the present Indian social structure and position of women therein, it is imperative to know the operation of various historical, political, cultural and economic factors moulding the society. Such a historical perspective is all the more necessary in case of a society with a continuous history of more than three thousand years. However, reviewing women's position across historical phases is fraught with innumerable difficulties. The changing position of Indian women has many facets and a generalization is well nigh impossible because of the existence of considerable variations among regions, between rural and urban areas, among classes and among different religious, ethnic and caste groups. However, attempt here is only to provide a general overview of the changing position of Indian women.

A historical survey of the position of Indian women indicates several distinct stages of development and decay. During the Vedic period the position of women was fairly satisfactory. Girls were educated like boys and had to pass through a period of Brahmacharya. Many of them used to become distinguished poetesses. Upanayam (ceremonial initiation into Vedic studies) was as common in the case of
girls as it was in the case of boys. They, therefore, could recite vedic mantras as a matter of course. The marriages of girls used to take place at a fairly advanced age, the normal time being the age of 16, 17 years. The period before marriage was utilized for imparting education to them. Educated brides at advanced age had naturally an effective voice in the selection of their partners in life. Marriage was an ideal recommended to both men and women by vedic religion. The woman therefore was not an impediment in the path of religion, her presence and cooperation were absolutely necessary in performing religious rites and ceremonies. The position of the wife was an honored one in the family. She was the joint owner of the household property with her husband. They were entitled to acquire property. The vedic texts did not deny rights of inheritance to woman, particularly to unmarried daughters.3

Women used to move freely in the vedic society. In social and religious gathering they occupied a prominent position. This was the situation in the Rig-Vedic age (3000 B.C to 1500 B.C.).

There was, however, a gradual decline in the position of women during the age of the Brahmanas and Upanishadas (c. 1500 to c. 500 B.C). The first attack was on imparting education to the girls. The system of sending out girls to famous teachers or centers of education came to be discouraged. It was laid down that only near relation like the father, the brother or the uncle should teach them at
home. Naturally therefore religious and secular training became possible only in the case of the girls of cultured and rich families. As a consequence, there arose a tendency to curtail the religious rights and privileges of the average woman. This affected slowly their right to do Vedic studies. However, the practice of child marriages still had not started in this age. The custom of Sati was not in vogue at all. Widow remarriage was allowed. Purda was altogether unknown, but women had ceased to attend public meetings.

However, the relatively more satisfactory position of women till 500 B.C. was due, partly to political and partly to religious reasons. The society was still predominantly pastoral and nomadic. Men were mostly engrossed in military activities, conquest and consolidations. They had to rely to a great extent on the help and cooperation of women in the normal spheres and activities of family life. Women used to play an active role in agriculture and knitting cloth, making bows, arrows and other war materials. They were thus useful members of society and were treated with respect. The cheap or forced labor of enslaved populations was not yet available. The exigencies of the political situations in this period were responsible for sanctioning of Niyoga and remarriage. Vedic chiefs (Rishis) were anxious for more and more heroes. The practice of Niyoga and remarriage could comply with such demands. That was the reason for accepting the production of sons through niyoga and also for allowing remarriage.
Another factor for relatively better position of women was the influence of religion. It was essential to offerordained sacrifices to Gods for pouring happiness andprosperity in this life as well as in the next. And onlymarried couples were allowed to perform such religiousceremonies. Therefore, the wife was an absolute necessity. Toenable her to discharge her religious duties properly, it wasnecessary to ordain proper education and training to her.Naturally all this helped in ascribing her an equal statuswith that of the man.

But in the next age of Sutras and Puranas (the Epics)(500 B.C to 500 A.D), the position of women deterioratedconsiderably. Some centuries before the beginning of thisperiod when Aryans migrated from the cold and peacefulregions of the north to the plains, Incessant warfare againstthe aborigines became the feature of life. In the earlierperiod of expansion, Aryan followed the traditions ofruthless warfare. However, when they reached the upperGangetic plan, they found that the indigenous civilizationwas too deep rooted to be completely wiped out. Thus when theAryans by reason of their superior skills and intelligencegained a victory, they captured the defeated men and women.The men were treated as of subordinate caste and service ofthe Aryan conquerors became the only duty of this Sudraclass. Women were treated as dasis or maids of household.However, when these two races proceeded to live together,inter-marriages became inevitable. The marriages of Aryan menwith non-aryan women became common. Slowly, the non-Aryan
idea of polygamy entered the Aryan mind which laid the axe deep at the root of woman's high status in society. Thus the introduction of the non-aryan wife into the aryan household and the polygamous marriage became the key to the general deterioration of the position of women that gradually and imperceptibly started at about 1000 B.C. and became marked in about 500 years. The non-Aryan wife with her ignorance of Sanskrit language and Hindu religion could obviously not enjoy the religious privileges. Association with the non-Aryan wives affected the purity of speech of the Aryan co-wife as well. This led to grave mistakes and anomalies in the performance of the rituals. Eventually the whole class of women was declared ineligible for vedic studies and religious duties.

The growing complexity of the vedic sacrifice was another factor that tended to make the wife's association in religious rituals a more and more formal affair in course of time. The slightest mistake in performance of complicated sacrifices or in the recitation of its hymns was regarded as fought with very grave consequences. It required a long training to get the necessary capacity to follow intelligently the minute details of these sacrifices. This was an impracticable proposition for the average girl. There were new forces in society which were clamouring for early marriages. The Aryan had settled down in a rich and prosperous country and their political supremacy had become unquestioned. Naturally, they took to easy and luxurious life. The marriageable age of the girls began to be lowered,
and consequentially it discouraged their *upanayan* and education. The prohibition of *upanayan* and substitution of marriage for *upanayan* in the case of girls, the neglect of education and the lowering of marriage age produced disastrous consequences upon their position during this period. It reduced them to the status of *Sudras*. Society had begun to discourage widow remarriages. Due to the child marriages there was significant increase in the number of young widows. Probably to provide for the maintenance of such young widows maintenance rights were given to them against the joint family property. However, recognition of such proprietary rights, though limited, brought in the practice of *Sati*, in the name of religion and morality.

During the Smriti period (500 A.D. to 1800 A.D.) People had became accustomed to look upon women as immoral and criminal by nature. A positive propaganda was launched to curtail their rights still further. They had always to be subservient to men's interest. The laws of Manu insisted that a woman should be kept in dependency by her husband because by nature they were passionate and disloyal. The salvation and happiness of women revolve around their virtue and chastity as daughters, wives and widows. This theme has been reiterated by the symbolism of seed and the earth. An implication of this symbolism was that the man was the lord, master, owner and provider and woman was a commodity or a possession.

A woman during this vast span thus, not only occupied
in inferior position but was made to feel that her position was subordinate to men in society.

Despite the overall social and cultural sub-ordination of women, the only direction in which the position of women improved was the one of proprietary rights. The right of the widow to inherit the share of her husband, and the evolution of the concept of Stridhan mitigated at least at normative level the injustice done to women. We will discuss the evolution of proprietary rights in detail elsewhere.

Position Of Women During Pre-Independence Period:

During the pre-independence period there were two major movements which affected the position of women viz. the Social Reform Movement and the Nationalist Movement. Both these movements raised the question of equal status of women. The Social Reform Movement has been regarded as a key to the intellectual processes that went into the making of modern India. The issues taken up by the social reformers were sati, ill-treatment of widows, ban on widow re-marriage, polygamy, child marriages, denial of equal property rights with men and illiteracy of women. Social reformers felt that these social evils should be eradicated by raising consciousness and making people sensitive to the injustice perpetrated on women. They thought that by giving women the access to education and by enacting progressive legislations, social change would be initiated. Raja Ram Mohan Roy, Ishwarchandra Vidya Sagar, M.G. Ranade, Mahatma Phule and others from all
parts of the country raised their voices against some of the unjust practices. One of the important offshoots of the social reform movement was the establishment of the National social Conference in 1887 which provided a forum to the reformers. In their annual meetings women's problem were always discussed.

Another very powerful force which helped change the position of and attitude towards women was the Nationalist movement, particularly during the Gandhian phase. The various movements like Non-cooperation movement of 1921, the Civil Disobedience movement 1930, provided avenues for mass participation. In various satyagrahas not only the upper class urban women participated, but unsophisticated rural women also assured leadership. They organized themselves into groups and broke salt law, picketed shops selling liquor and foreign manufactured cloth.

In short, the movement for emancipation of women in India began in the 19th century when the social reformers criticised the outmoded social practices and they attempted to change some of these practices by applying the rational and humanitarian criteria to the problem. They further laid great stress on the education of women as a liberalizing activity. The nationalist movement not only drew a large number of women to political activity but it also generated strength and confidence among women which helped them organize and fight for their own cause. The formation of the All India Women's Conference in 1927, was a crucial event in
women's march towards equality.

Thus, during the phase prior to independence, an awareness of the need to remove social disabilities of women was created. The doors of education were opened for them. Political participation of women was increased.

Position Of Women After Independence:

The Constitution of independent India, contemplated a social revolution to be brought about through the use of law as an instrument of directed social change. The attainment of equality of status for women was one of the specific objectives which is implicit in the preamble, the fundamental rights, and the directive principles of State Policy. Article 14 ensures equality before law and Article 15 prohibits any discrimination. But where inequality exists, it provides for affirmative steps towards amelioration of such inequality by permitting protective discrimination. Protective discrimination in favour of women is provided in Art 15(3). The Constitution emphasizes the equalitarian thrust when it says that the state shall direct its policy towards securing that the citizens, men and women, equally have the right to an adequate means of livelihood or equal pay for equal work for men and women and health and strength for workers, men and women. State has also been enjoyed to secure just and humane conditions of work and for maternity relief. A specific mention of maternity relief clearly reveals the anxiety of the
Constitution makers to make it abundantly clear that maternity was a social obligation and women would not be handicapped because of maternity.

However, these values enshrined in the Constitution have remained merely at the normative level. Exploitation of women is prevalent in every walk of life, atrocities committed on women are being reported everyday in newspapers, and the sex ratio is declining continuously. The 1991 census report mentions it as 929 women per 1000 men. In the economic sphere, her household work is not treated as productive. Marginalisation of women in the work force is on increasing level. There are no equal jobs opportunities provided in practice nor they are paid equally. The favourable legislation caring for their rights are successfully being avoided with the help of loopholes in the legislations.

What we find thus is a queer contrast between precepts and practices. On one hand, the Constitution proclaims equality but on the other hand, the social system based on patriarchal ideology reinforces inequality. Patriarchy has lodged itself deep in the consciousness of both men and women. This makes it further difficult to fight against inequality, because it grips women from within and without.

The Indian Society is based on a sharp distinction between roles and spheres of activity of men and women. Sex based division of labour gives secondary status to women. A women is primarily associated with the home, is expected to
look after domestic chores. Her typical roles are those of a housewife and mother. In the cultural understanding of the people, homemaking is identified with femininity. Women who work outside the house are also expected to be home makers in the same manner as women who confine themselves exclusively to home making activity.

The major share of household work is with the female members. But they do not have the decision making powers. Male dominance is found to a greater extent in many areas. The differential treatment to the girls in the family starts right form their birth. There is no freedom to talk to the male relations. On economic aspects, they have very little control over family resources. Very few have independent earnings. Naturally they are financially insecure. Even those who work do so for supplementing the family income. They also lack confidence and are mental insecure.

Thus the constitutional recognition of equal status for women has given them de jure equality. But de facto inequality continues because of the cultural internalisation of the patriarchal value system by men as well as women. Women continue to have a low self image vis-a-vis men.

However, the relative ease with which Indian women secured equality has led to a myth that Indian women enjoy a very high status in society. However, there is still long way to go to make the dreams of constitutional makers a reality.
PART - II

COMPARATIVE POSITION OF WOMEN IN INDIAN FAMILY LAW:

In the last part we saw the initial stages of human history. In the Vedic period women enjoyed equal status with men. However, in the process of civilization the patriarchal ideology became the basis of the society which continues even today. Continuous thousand years impact of patriarchy, on the minds of people, thus could not be wiped away by the constitutional provision for equality. Although a number of progressive legislations to improve the status of women were enacted, (such as The widow Remarriage Act 1856, The Abolition of Sati Act 1860, The child Marriage Restraint Act 1929, The Hindu Women's Right to property Act, 1937 and number of legislations in post independence era in the area of criminal law, family law and labour laws), we could hardly succeed in achieving the equality of status for women.

In this part, we propose to discuss the position of women under Indian Family Law. In fact, there is no one uniform Indian Family law as such, applicable to all the citizens. We mean by the term 'Indian Family Law', the different laws governing the family relations of the people. In India the family relation laws are based on the religion of the individual. Hindus are governed by the Hindu law, Muslims by the Muslim Law, Christians by the Christian law and Parsis by the Parsis law. These family relation laws
cover the aspects of marriage, divorce, maintenance, adoption, guardianship and succession. These laws are called as the personal laws. Although these personal laws provide different rules regarding marriage, divorce, adoption or inheritance, they have one common feature, they treat women as subordinate species. While discussing the comparative position of women under the Indian Family Law, we think it is not necessary to go into the provisions of each of the personal laws. An overview of the provisions of the different laws of marriage\textsuperscript{23-A}, divorce, maintenance adoption, guardianship and succession affecting the position of women would suffice the purpose.

Law Of Marriage :

Hindu Marriage : Before 1955 :

Marriage according to the classical Hindu law was a sacrament, a \textit{samskar}\textsuperscript{24}. However, marriage as an institution was not in existence in pre-vedic period. But in vedic age as seen earlier, marriage was regarded as a social and religious duty and necessity for all. Marriage was defined as a holy union for the performance of religious duties\textsuperscript{25}. In the vedic period, a choice was given to women for selection of their life partners. They used to marry at or after 16 years. However, as seen earlier, in the process of evolution, for various reasons, the child marriage became the practice. And only in the present century in 1929, the law restraining child marriages was enacted. Acceptance of child marriage by the society, directly affected the status
of women as it deprived them from taking education, which in turn lowered their status.

The ancient Hindu law recognized eight forms of marriage which were classified into four approved and four unapproved. In one of the approved Brahma form of marriage, the marriage used to take place without paying any bridal money to the bride's father which indicated a better position of women. However, in an unapproved Asura form of marriage, the husband had to pay the bride price to the father which was known as sale of the bride.

There was no restriction on a Hindu man as to number of wives he could marry at one time. Thus polygamy was allowed till 1955, except in those states where antibigamy laws were enacted. However, a woman could marry only once in her lifetime, until the Widow Remarriage Act was passed in 1856, which permitted a widow to remarry.

The union of spouses by marital tie gave rise to important legal consequences in the shape of rights, duties, obligations and disabilities between the parties to the marriage. It especially affected the status of the wife to a great extent. She acquired from the moment of her marriage a right to the property belonging to her husband. She used to become co-owner with the husband though she had no co-equal rights along with him. But by virtue for this right she was entitled to be maintained by the husband. Thus her right for maintenance was an incident of the status or estate of matrimony. The husband was under a legal obligation to
maintain his wife. This obligation was personal in character and arose from the very existence of the relation between the parties. The rule gave an absolute right of maintenance to the wife, irrespective of possessing property or no property by the husband\textsuperscript{28}. A corresponding duty was imposed on the wife to submit herself obediently to his authority and to remain under his rule and protection\textsuperscript{29}.

This itself indicated the status of the wife as subordinate to her husband. All these rights and obligations continue even to day in the same form and are not the special features of the Hindu law alone. All the legal systems treat the wives in the same way.

Marriage being a samskar, it created an indissoluble tie between the husband and wife. Therefore, the concept of divorce was unknown to the Hindu law. However, customary divorce was practiced in the lower sections of the society. Apart from these provisions, the marriage law provided for a prohibited degrees of relations with whom marriages were illegal. Religious ceremony of \textit{saptapadi} before sacred fire was an essential requisite to be fulfilled. However, these provisions are not discussed further as they do not affect the position of women.

The Hindu Marriage Act, 1955:

The Hindu Marriage Act (HMA) came in force on the 18th May 1955. It brought in certain fundamental changes in the law of marriage, which were based on the principle of
equality. Monogamy became the rule of marriage\textsuperscript{30}. Bigamy was rendered punishable as an offence under the penal code\textsuperscript{31}. Essential conditions\textsuperscript{32} and requirements of a valid marriage are prescribed. Minimum age\textsuperscript{33} for the marriage for the girl and the boy is prescribed. It provides for sound mental\textsuperscript{34} condition of the parties to the marriage. Matrimonial reliefs by way of restitution of conjugal rights \textsuperscript{34-A}, judicial separation\textsuperscript{35}, declaration of nullity\textsuperscript{36} of marriage, and divorce\textsuperscript{37} are provided for both the spouses.

The right is given to both the spouses to claim maintenance\textsuperscript{38} from each other. However, this right under the HMA can be enforced in the court of law, only on the occurring of matrimonial discord between the spouses and when one of the matrimonial remedies provided under the HMA is asked for, by either of the parties. The maintenance right during the coverture is not covered by the HMA. The obligation of the husband to maintain his wife during coverture is put under the separate enactment entitled the Hindu Adoption and Maintenance Act, 1956\textsuperscript{39}. This Act has, in fact, merely codified the classified Hindu law of maintenance. In addition to this Act, wife can also avail the remedy of maintenance under sec. 125 of the Criminal Procedure Code.

Thus the HMA brought in a revolutionary change to improve the status of women. Major changes were further brought in into the HMA in the year 1976 which introduced divorce by mutual consent\textsuperscript{40}. In 1978, the Child Marriage
Restraint Act was amended which raised the age of the bride from 15 to 18 and the bridegroom from 18 to 21\textsuperscript{41}. It was thought that the raising of the age of marriage would be good for the health of the girls and would also promote education of girls. Education would make them independent and liberal in their thoughts. Education would also help them in becoming economically independent and all this in turn would help them improve their position in the family and in the society. Another reason for raising the age of marriage was that it would reduce the post marital fertility period of a girl and thereby would help the programme of population control.

The 1976 amendment, to the HMA further defined meticulously and elaborately the requisite mental capacity of the parties for a valid marriage. Thus the requirement of advanced age and particular mental capacity along with the concept of divorce brought in the contractual aspect to the Hindu marriage. However, performance of the religious ceremonies\textsuperscript{42} as an essential requisite for the solemnisation of marriage has also kept intact its sacramental nature.

\textbf{Muslim Marriage:}

In the first part, we have taken an overview of the position of women in India. There we did not cover the comparative position of women belonging to different religions. Because the non-Hindu women never form truly characteristics elements in the Indian civilization. However, we may mention here in brief, the position of women in pre-Islamic Arabia which would help us understand and appreciate
the improvement in the status of Muslim women in post-Islamic period.

The position of women at the time of the prophet was no better than that of animal. They had no legal rights. They were treated as chattel of either the father or the husband. Polygamy was universal. Divorce was easy. And female infanticide was common.

At the time of the advent of Islam, Arab society was generally nomadic. The tribe was the principal unit. The tribal chief exercised great power and influence. Customs regulated the lives of people. Following Customs regulating the relations between the sexes would point us the status of women prevalent in pre-Islamic period.

1) A form of marriage where a man would ask the father for the hand of his daughter and then marry her by paying dower.

2) A man desiring noble offspring, would send his wife for a great chief and have intercourse with him.

3) A number of men less than ten, would be invited by a woman to have intercourse with her. If she conceived and delivered a child, she had the right to summon all the men and they were bound to come. She was to decide who fathered the child.

4) Muta or temporary marriage was a common practice.

5) Dower was one of the necessary conditions of marriage. But the amount was paid to the guardian and for this reason the marriage contract was for all practical purpose a sale.
6) Women was never free to give consent for her marriage. Her consent was immaterial and the father or male guardian could give her in marriage.

7) There was no limit to the number of wives a man could have.

Islamic Law Of Marriage:

On the background of the Pre-Islamic conditions prevalent in the Arab Society, post-Islamic law is much advanced and gives better status to women.

The law not being codified, the different schools and subschools are in existence and the different principles of law are followed by these schools.

Marriage (Nikah) is defined as contract, the object of which is procreation and legalization of children. It is not a sacrament like Hindu law. The contractual aspect of Muslim marriage is taken from the Pre-Islamic period. The two basic attributes for a valid contract of marriage are sound mind and age of puberty.

Thus, irrespective of the Child Marriage Restrict Act, the Muslim personal law prescribes its own rule for the age of marriage. A guardian is entitled to perform a contract on behalf of the minor. The other essential prerequisite for a valid marriage is, the free consent of both the parties to the marriage. If a girl is capable of giving consent, the guardian is not entitled to interfere. But among Shafei and Ismaili sub-schools of Sunni, the consent of guardian is

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essential, irrespective of the fact whether the girl has attained puberty or not. Thus in these schools the important aspect of consent has no meaning.

For performance of the contract of marriage presence of witnesses is an essential requisite for Sunnis. However, in Hanafi sub-school of Sunni, two male or one male and two female, (i.e. two women are equated with one man) witnesses must be present. In Shia school presences of witnesses, is not legally required. As regards religion of the parties both are required to be Muslims. But a Muslim man is allowed to marry with Kitabia and his marriage is valid. But if a Muslim woman marries Kitabi man, her marriage is treated as void.

As to the number of spouses, a woman can marry at a time only with one man. Polyandrous marriage is not allowed. Her second marriage is treated as void. But a Muslim man is permitted to marry four women at a time. Thus the number of wives is restricted to four in Post-Islamic period, over the innumerable number of wives allowed in pre-Islamic period. The payment of dower (maher) to the wife by the husband, on marriage is an essential requisite of the Muslim marriage. This amount must be paid to the wife and not to her guardian unlike the pre-Islamic period. This amount is to be paid to show respect towards the wife which is a typical feature of the Muslim law.

As the law stands today Muslim wife is entitled to receive maintenance from her husband during coverture. If the
husband refuses to maintain her, she has a right, of not staying with him. But on divorce she is entitled to claim maintenance only for the *iddat* period, (a period of seclusion around 3 lunar months after divorce).

The last important aspect of Muslim law of marriage, is, it recognizes the concept of divorce since the beginning because marriage is treated as a contract which can be brought to an end. The divorce which was very easy in pre-Islamic period was regularised in post-Islamic period. There are various forms of divorce (*talaq*) under the Muslim law\(^55-A\). However, the most common form followed in India is *talaq-al-Bida*\(^56\), where the husband and the husband alone, has the power to give irrevocable, unilateral, oral *talaq* even in the absence of the wife and without assigning any reasons for it, by uttering *talaq-talaq-talaq* three times. There is a constant hanging sword of oral *talaq* on the head of a Muslim wife and of taking of another wife by the husband. Law has not made any change in her position except passing the law of the Dissolution of Muslim Marriage Act, in 1939. This Act entitled a Muslim wife to go to the court on certain grounds\(^57\) for dissolutions of her marriage. Before this law, enacted in 1939, there was no right given to the Muslim wife to dissolve her marriage\(^58\). However, how far such a law will have a practical value when such a drastic weapon of dissolving the marriage unilaterally and orally is in the hands of the husband?

Thus at the initial stage of development, one can say
that the Muslim law was progressive. It required the consent of the girl and the payment of dower to her for a valid marriage. It also provided for divorce by mutual consent. But thereafter, no change is made in the law of marriage. After independence though the Constitution has enshrined the principle of equality, no efforts were made to bring equality amongst Muslim men and women.

Muslim divorced wife is not entitled to claim maintenance from her former husband beyond the period of iddat, according to the Muslim Personal Law. However, she was entitled to claim maintenance under sec. 125 of the Criminal Procedure Code from 1974 to 1986. But due to Shah Bano controversy when the Parliament enacted the legislation entitled the Muslim Women (Protection of Rights on Divorce) Act, in the year 1986, a Muslim divorcee lost her right of maintenance under sec. 125.

Thus a Muslim woman is at a disadvantage as compared to non-Muslim women of the other communities. Particularly, so, as the Muslim law allows a man to have any number of wives, along with a right of giving unilateral, oral talaq to the wife. On top of it, there is no responsibility on him to provide maintenance to her after divorce.

Parsi Marriages:

The descendants of the ancient Magi of Persia emigrated to India more than 1200 years ago when it was overrun by the followers of Islam. Rather than dying by the
sword or surrendering their religion for that of the conquerors, the followers of Zoroaster preferred to migrate to this country.\textsuperscript{60}

Since their arrival in India in 717 A.D., Parsis had no recognised law to govern their social relations till 1865. In 1865, the Parsis made representation to the Government through Parsi Law Association for enactment of matrimonial law. Thus was born the Parsi Marriage and Divorce Act, 1865, largely fashioned after the Matrimonial causes Act, 1857 of England. It was replaced in 1936. Recently in 1987 the law is amended further to bring it in tune with the constitutional value of equality. The present Parsi Marriage and Divorce Act of 1987 is almost on par with the Special Marriage Act and the Hindu Marriage Act. Hence it is not discussed further in details.

**Christian Marriages:**

The marriage according to Christian religion is a civil contract but is still indissoluble at the will of the parties, particularly so among Catholics.

In India, the marriage law applicable to Christian was enacted in the year 1869 and 1872. It is surprising that the Indian Divorce Act was passed first in 1869 and then came the Indian Christian Marriage Act of 1872. These two Acts were enacted on the basis of the Matrimonial Causes Act, 1857 of England. But since thereafter not a single amendment has been introduced to these two Acts. The marriage law of
Christians outdated. It provides adultery as the only ground for divorce. Moreover, it further discriminates amongst men and women. While a husband is required to prove merely adultery of the wife to seek divorce, the wife has to prove in addition to adultery, cruelty or desertion or conversion or marrying second time by the husband or incestuous adultery on part of the husband as a ground for getting divorce. She is entitled to claim maintenance from her husband, in certain situations only, which are discussed in detail subsequently.

The Special Marriage Act, 1954

The Special Marriage Act, 1954 is a secular legislation governing the matrimonial relations of the parties. The religion of the parties has no consideration for solemnisation of marriage. Marriage is a civil contract and no religious ceremonies are required to be performed. This is a secular legislation based on the principle of equality. However, one provision under this Act still enforces inequality. Under sec. 37 of the Act a husband is not entitled to claim maintenance from his wife though she is entitled to claim such maintenance from him.

This Act, however, is optional. The choice is with the parties whether to marry under this law or under the religion based personal law. But we do not find much of use of this law by people.

Comparing the position of the women under the
different matrimonial laws, what we find is that all women belonging to different religions are not equally situated. These laws are violative of Art. 15 of the Constitution as they discriminate on the basis of religion. We are aware of Art 25 of the Constitution which recognises a fundamental right to religion. But Art 25 starts with restrictions on the right to religion. It further empowers the State to pass legislation for social reform. Additionally the Directive principle through Art 44 of the Constitution requires the State to bring in Uniform Civil Code\(^65^\text{-A}\). However, it is submitted that instead of going for a Uniform Civil Code directly, we can adopt the strategy of modernising all the existing personal laws based on the values of secularism equality, and humanity. That should be the first step for achieving the object of the Uniform Civil Code.

We are aware of the fact that mere modernisation and secularisation of these laws, is not going to create equality amongst men and women. Law is an instrument of social change\(^66\) but it is not the only instrument. To translate the legal rights into reality is the task of other agencies\(^67\). Public opinion will have to be moulded to accept the value of equality. The judiciary and the executive have a major role to play to achieve this goal. Sometimes, the judiciary has interpreted the legislation strictly and has failed to give effect to the objects underlying the legislation e.g. in dealing with the cases of bigamy\(^68\) and maintenance\(^69\). The executive branch of the government has seldom made any effort to set up the machinery to educate the people, to make them
literate, to make them aware of their legal rights.

It is therefore, necessary not only to legislate, but to see that it is implemented effectively. How non-implementation of laws affect the position and legal rights of women can well be explained with an illustration of polygamy. As stated earlier, bigamy is an offence under the Indian Penal Code. The second marriage is declared as void under the Hindu Marriage Act. Still polygamy is prevalent among Hindus. In fact, the percentage of polygamous marriage was found slightly more among Hindus than among Muslims.

Law Of Dowry:

The system of dowry which was essentially a middle class, upper caste and Hindu phenomenon has now transcended to other classes, castes and religious groups. It is prevalent among all the communities at all the levels. The concept of dowry was unknown to Muslims according the verses of Quran. But nowadays the practice of dowry is prevalent among Muslims also.

In ancient Hindu society the dowry system was connected with the conception of marriage as dana or gift. A religious gift in kind was usually accompanied by a gift in cash or gold so the gift of the bride (Kanyadana) also was accompanied by a formal gift in cash or kind. This itself indicated the status of woman! She was treated as commodity to be gifted! However, this formal gift was voluntary. But as the time passed the demand of dowry by
the bridegroom and his parents became the normal practice and lost its voluntary character. In modern times, the settlement of dowry has all the characteristics of a market transaction. In spite of the passing of the law in 1961 viz. the Dowry Prohibition Act, which is applicable to all irrespective of religion, the demand for dowry is on increase in all the communities. Failure to respond to the demands of the in-laws for dowry often results in increased violence, wife battering and ultimately bride burning.\textsuperscript{71}

The Dowry Prohibition Act defines the term dowry\textsuperscript{72} and treats taking as well as giving of dowry as an offence\textsuperscript{73}. Taking of dowry was declared as a cognizable\textsuperscript{74} offence for the purpose of investigation by the amendment brought in the year 1984 in response to the nationwide demand of women's organisation. But the Act has been found to be ineffective due to several factors. Giving and taking of dowry happens inside the four walls. The parents of the bride are interested in marrying off their daughter. If they raise voice against this evil, their other daughters may not get married at all, of which they are afraid. Cultural norms and social pressures restrain the parents from making use of the law. Further, marriage is the only aim in the life of most of women. The society, parents, as well as women themselves look towards woman as some relation of the man (daughter, wife, sister etc.) and never as an individual having her own rights and who also needs to live with dignity and self respect.\textsuperscript{75} Demanding dowry as well as giving dowry as a consideration of her marriage is the ultimate insult to
her dignity. It reflects the devaluation of women's role in society and their powerlessness. The quick economic gain is the motivating factor for those who demand dowry. The whole concept of dowry is based on the low position of women in society. They are merely being used as an instrument in the process.

Organised efforts on behalf of various voluntary organisations to curtail the evil of dowry have resulted in the amendment of the criminal law. However, this social evil of dowry cannot be eradicated by law alone. What is needed is the creation of a cultural environment in which the practice of dowry would be condemned. What is needed is making women conscious of their rights, their power, their self-image. What is needed is an increase in economic independence of women. We have to go a long way for which continuous sustained efforts, on behalf of all who believe in human dignity, are essential.

Law Of Guardianship And Custody:

Because of the tender age, children need someone to look after them and to take decisions for their development. The law entrusts this duty on a guardian who may be natural, testamentary or appointed by the court. The guardian is to look after the person of a minor or his property or both. As in other spheres of family law, there is no uniform law of Guardianship. There are three distinct legal systems viz. The Hindu Minority and Guardianship Act, 1956, Muslim Personal law and the Guardian and wards Act 1890. However,
one common factor prevalent in all these laws is, the natural guardianship or the parental authority which is synonymous with the paternal authority. The father is the first natural guardian of his minor children. His right is the superior right over the mother.

**Hindu Law:**

Under the provision of the Hindu Minority and Guardianship Act, the father is the first natural guardian\(^7\) of his son and/or daughter till he/she attains the age of 18 years\(^8\) and after him the mother is the guardian. The prior right of the mother is recognised only to custody in case of children below five years\(^9\) but even this right is qualified by the word 'ordinarily'. However, in case of any dispute as to the custody of the child, the Act directs the courts that the paramount importance be given to welfare of the child\(^10\).

**Muslim Law:**

The Muslim law also recognises the father's dominant position regarding guardianship. The mother is never entitled to become the natural guardian of her own children\(^11\). The non-Muslim mother's right as a guardian is recognised at least next to the father. But the Muslim mother is never recognised as a natural guardian even after the death of the father. In the absence of the father the guardianship passes to the paternal grandfather but not to the mother! The father, if so desires, may appoint the mother as a
testamentary guardian.

However, the mother's right of custody, is an absolute right except in case of misconduct on her part. This right of the Muslim mother is an advance on the other legal systems. But even when the mother has custody of the minor child, the father's general right of supervision and control remains. In Hanafi law (Sunni), the mother is entitled to the custody of her male child till the age of seven years and of her female child till she attains the age of puberty.

In Ithna-Ashari law (Shia), the mother has the custody of her male child till the age of two years and of her female child till the age of seven years. The Muslim law recognises guardianship in marriage separately. The marriage guardians alone are entitled to give the minor children in marriage. Though the mother is never recognised as the natural guardian, she is at least recognised as marriage guardian but only in the absence of father, father's father, how high-so-ever, brother and other collaterals.

Guardians And Wards Act, 1890:

The supremacy of paternal right is again the keynote of the Guardians and Wards Act which governs all communities other than Hindus and Muslims. The father's right is primary over all the other relations of the child. Therefore, the provisions of various laws regarding guardianship and custody, of minor children clearly point out the
subordinate status given to a mother. In a patriarchal society based on the subordination of woman, it is no wonder, if her position vis-a-vis her children is secondary to that of the father.

What we need is the establishment of equal rights of guardianship of the parents towards their children simultaneously. The existing basic presumption that the father is the natural guardian of the child should be done away with, because of it inherent patriarchal bias.

As regards the custody of children, it should be given to the parent who has taken responsibility for looking after the child. The lack of earning capacity of the mother should not debar her from getting the custody of the children.

Law Of Adoption:

Adoption is the institutionalised practice through which an individual belonging by birth to one kinship group acquires new kinship ties that are socially defined as equivalent to the congenital ties\(^86\). It is the act of a person who takes upon himself legally, the position of a parent to a child, who is not his biological child.

The institution of adoption is recognised only among Hindus and not among Parsis, Christians or Muslims. The classical Hindu law recognised the adoption with twofold objects\(^87\). The first was to secure spiritual benefit to the adopter and his ancestors by having a son for the purpose of
offering funeral cakes and libations of water to the manes of the adopter after his death and his ancestors. The second was to secure an heir for the property and to perpetuate the adapter's name.

The shastric law did neither allow a woman to take a child in adoption (some schools of Hindu Law recognised the right of a widow to adopt a child not to herself but as the agent of her late husband) nor recognise the adoption of a girl.

The classical Hindu law of adoption was very much discriminatory against women. This law was codified in the year 1956 as the Hindu Adoption and Maintenance Act. The Act amended the classical Hindu Law to a great extent and it gave much better position to women. Accordingly, a male Hindu can adopt a girl or a boy. If a husband wants to take a child in adoption or if a father wants to give a child in adoption, he can do so only with the consent of wife/mother respectively. A single woman - unmarried, divorced or widow has a right to take a child in adoption in her own capacity. However, in the case of an existing marriage, as seen earlier, the primary right of the father/husband continues either for giving/ taking the child in adoption. The wife's/mother's right is confined only to the giving of consent. It reflects the continuation of the 'superior' right of a man over a woman.

Regarding the law of adoption what we need is the complete equality between the spouses and parents. It is submitted further that the central focus of adoption must be
the child.

**Law Of Inheritance And Property Rights :**

Economic independence and prosperity have usually an important bearing on the well being of a class. However, in a patriarchy, where the structure of society is based on the sexual division of labour, where man is supposed to be the bread winner for the family and woman is expected to bear children and look after the house-hold work, women are bound to be economically dependent on men. The well known hypothesis that the low position of women in family and society goes hand in hand with their exclusion from the economic process is confirmed by the Indian social history up to the present day. Women, to a great extent are excluded from production process as well from right to property and inheritance.

As mentioned earlier, in India, the laws of inheritance are personal laws and are governed by the religion of the parties. As the position stands today, women are not treated equally with men under all these personal laws. All these laws invariably discriminate against women.

**Hindu Law :**

Before we look into the contemporary position of Hindu women vis-a-vis their property and inheritance rights, it is proper to discuss, in brief, the historical development of their rights.
Proprietary Rights Of The Wife During Coverture:

In the Vedic times, a wife was regarded as a co-owner in her husband's property. No other personal law recognised that a wife became a co-owner of her husband's property from the time of her marriage. A Hindu-wife possessed higher rights of a co-ownership in her husband's property and her right of claiming maintenance during coverture was merely the incident of that higher right.

She was entitled to residence and maintenance, not as a mere dependent, but because she was the co-owner. The Hindu Law has a unique concept of joint family and joint family property. The property acquired by the members of the joint family, unless claimed to be separate, was treated as the joint family property. A wife was entitled to obtain a share equal to that of her son when the property of the joint family was partitioned, by her husband between himself and his sons. This very fact established beyond doubt her co-ownership in her husband's property from the date of her marriage. The word 'patni' was explained as one who possessed equality of rights with the husband.

However, on degeneration of the vedic culture and civilisation, this co-ownership was treated as a 'subordinate right' by the text writers, commentators and in turn by the English judges. The husband was treated as the principal person in the house and was the main earning member of the family. The wife was prohibited from asking partition of the property on her own. She was not allowed to dispose off her
interest in the family property. She was merely entitled to be maintained out of the property and had a right of residence in the family house. Later, it became an absolute duty of the husband to maintain his wife, whether he had property or not. Thus it became merely his personal obligation. It did not attach to his property by way of charge which could have been enforced against the purchaser\(^{96}\). Her co-ownership could be defeated easily by his disposition of the property. She had no right to challenge such disposition even if it was for illegal, immoral purpose. She had absolutely no means to put a check on the reckless and ruinous career of her profligate and prodigal husband\(^{97}\). Due to this subordinate co-ownership, her proprietary right was treated as right in lieu of maintenance\(^{97-A}\). The term maintenance connotes provision for lifetime. Naturally, in future her right to property also became life interest. Therefore, this wrong interpretation of her co-ownership right became the fruitful source of all inequitable principles that defeated her legitimate rights one after the other. Particularly, in the immovable property, for a long time, the Hindu society was unwilling to invest the wife with exclusive ownership. However, as far as movable property like ornaments, jewellery etc. was concerned women's property — stridhan was recognised at a very early date\(^{98}\). The term stridhan was not defined anywhere. In its origin, it was connected with the custom of bride price. Then it covered the gifts received by woman at different times from different relations. Manu was the first writer to give a comprehensive
description of stridhan. According to him it consisted of gifts given by the father, mother and the brother, gifts given by the husband and presents given by anybody at the time of marriage. However the property earned by the wife with her own skills was not included in stridhan. The earnings of both the husband and the wife were dedicated to the family. But the law did not provide relief to the wife, in case the husband were to squander his own earnings. From about the 7th A.D., a general tendency was to enlarge the scope of stridhan but there was no uniform practice in the matter of recognising its scope. As regards the extent of the power which women possessed over stridhan, Manu declared that the wife should alienate the property with the husband's sanction. Later on, she was allowed to dispose of the movable property on her own, but not the immovable property. The husband was not allowed to touch the stridhan, save under exceptional circumstances.

The concept of stridhan was developed to help the woman. However, how far in reality, it helped her was a matter of doubt.

Inheritance Rights:

Based on the principle of right of co-ownership, the widow was entitled to succeed to the property of her husband in the Vedic period. However, the earlier smritis of Manu, Narada and others denied heritable rights to the widow and gave preference to other relations of her deceased husband, in inheriting his property. It was declared that a wife's
subordinate co-ownership interest was extinguished on the death of her husband. She was declared incapable of owning or inheriting the property and was relegated to the position of the dependent. Thus the widow's right of inheriting her husband's property recognised in vedic period, was taken away in the smriti period, irrespective of the fact whether she had son or not. Yajnawalkya was the first, in the process of development, to recognise her right to inherit the property of her deceased husband based on the principle of her co-ownership right with the husband. Vijnyaneshwara, the author of the commentary, on Yajnyavalkya's smriti called Mitakshara, reconciled this advanced view of Yajnyavalkya with the view of earlier smritis. He declared that a widow had a right to inherit the property of her husband who died separated without son. Thus, in the presence of a son, the widow was not allowed to inherit the property of her separated husband. But in the absence of a son she was allowed to inherit her husband's separate property. This was an improvement on the situation where she was totally denied any share in her deceased husband's separate property, in the absence of a son. Further, due to her co-ownership during the life-time of her husband, the wife was allowed to have an equal share with that of her son in the joint family property on partition of such property. Thus, her right as a wife (widow) in joint family property was secured in the presence of the sons but was not secured in absence of son. She was entitled to have an equal share along with the son when the partition of the property took place between her
husband and his sons. But on the death of her husband, as his widow, her share in the husband's joint family property in the absence of a male issue, was still not protected. Jimutavahan, who gave the law for the territory of Bengal, however, recognised all these rights of the widow. But in doing so he created the limited ownership. This implied that the widow was to enjoy the income of the property for life and preserve the corpus for the benefit of her husband's heirs and had no right to transfer the property and on her death, the property was to revert back to the heirs of her husband. This doctrine of limited ownership was, in fact, applicable only in Bengal. There was no scope for applying it to the rest of the country. But the liberal interpretation, giving wife/widow right into the property, separate and joint families of the Mitakshara, was not tolerated by the people generally. The public opinion was against giving property rights to women, therefore, everything that adversely affected the women's rights was welcome. Thus the doctrine of limited ownership originated in Dayabhag school in Bengal, was also made applicable to all kinds of rights which were created by Vijnyaneshwara in favour of women. This was the most harmful measure affecting women's rights.

Position After 1937:

The position of women's right to separate and joint family property explained above, continued till 1937. However, to give better rights to women in respect of property, the law entitled the Hindu Women's Right to
Property Act was passed in 1937. This Act gave an equal share to a Hindu widow in her deceased husband's separate property along with the son. And in case of the death of the husband without leaving behind any male issue, she got the same interest as her deceased husband had in the joint family property.

Thus the position after 1937 was:

1) A wife got equal share to that of the son in the joint family property if the partition was effected by the husband during his lifetime between himself and his sons.

2) A widowed mother was entitled to an equal share with that of her son in the joint family property, if partition took place between her sons after the death of her husband.

3) A widow got an equal share into the separate property of her deceased husband along with son.

4) In the absence of a son the widow succeeded to the whole of the separate property and joint family property of her deceased husband.

However, in all the situations mentioned above, her right was of the limited ownership!

Position After 1956:

The Hindu Succession Act came into force in 1956 with the object of removing inequality between the sexes in the matter of inheritance.

Till 1956, the daughter's right was not recognised in the joint family property. She was entitled to succeed to the separate property of her father only in absence of a son and
the widow, though the existence of such a right was there in the vedic period\(^4\). To bring in equality, the 1956 Act gave equal share to the daughter along with the son, in the mother's property and in the father's separate property. However, even today, in the coparcenary property birth right is given only to the son. A daughter is not entitled to have a share into the coparcenary property. A slight change was brought in her position through sec. 6 of the Hindu Succession Act. If her father died intestate, after this Act came in force, having undivided interest in the joint family property, she is allowed to have a share in the father's share along with the other heirs. Thus, if there is a family consisting of father, mother, a son and a daughter, on the death of the father, the father's share in the joint family would be calculated. The father, the mother and the son, each will get 1/3rd share. The daughter will not get any share initially. Then the father's 1/3rd share will be further divided equally among his heirs, each one getting 1/3rd of 1/3rd. Thus son gets 1/3rd + 1/9th of the total property and the daughter will get only 1/9th. This discrimination continues even today. Some State legislatures have passed laws and some are in the process of enacting a law, either to abolish\(^5\) the birth right of a son alone or to give birth right to daughter\(^6\) along with the son.

As regards the property possessed and owned by a Hindu Women a separate provision is laid down in the Act\(^7\). The Act declared her to be the absolute owner of all the property which she possessed.  

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However, rules of succession to her property are not the same as that of those for man's property. For e.g., a mother is entitled to succeed to the property of her deceased married son along with his widow and the children but she is not so entitled when her married daughter dies.\(^1\)

Further, there is no restriction on the will making power of a Hindu. This many a times results into deprivation of the legal rights of the women heirs.

**Muslim Law Of Inheritance:**

In pre-Islamic period women themselves were treated as property of men. So there was no question of they having any right to property or to inherit the property.

However, in Post-Islamic period the prophet gave the defined share to women in the property of their deceased relation. Since then, the Muslim women are entitled to the right of inheritance. The rules of distribution of the property of a male and female are same. There are two main schools—Sunnis and Shias. The Sunni law regards the Koranic verses on inheritance, as an *addendum* to the pre-Islamic customary law and preserve the superior position of male agnates. Cognates are not quranic heirs. On the other hand, the Shia law looks into the scheme of the Koranic verses on inheritance and gives share accordingly to the heirs. Thus the classification of the claimants is different among Sunnis and Shias. What one finds generally is that the Shia law is more liberal in recognising the property rights of women.\(^2\)
However, though the right of women to own the property and own it absolutely, with power of disposal, is in existence for a long time, one primary principle of the Muslim law of inheritance grossly discriminates against women. It is that if there are male and female heirs of the same degree, like a son and a daughter, a full bother and a full sister, the share of a female member is always half that of the male.

Unlike the non-Muslim law, the Muslim law restricts the person's right of testation. A Muslim can bequeath only 1/3rd of his estate. The question is whether he has the power to correct any hardship that might arise under the law of intestacy by the exercise of his testamentary power. It is beyond cavil that such hardship arises generally in the case of female heirs. But the Hanafi law appears to be rigid in not permitting any device whereby the inequities of the laws of inheritance may be rectified. A bequest to an heir without the consent of other heirs is invalid. The consent is required to be secured on the death of the testator. As the testamentary power exercised by a deceased, in favour of an heir, operates at the expense of the other heirs, it is not unnatural for the other heirs to refuse consent to a bequest in favour of some of them.

Parsi Law Of Inheritance:

Prior to 1837, the law applicable to the Parsees and their property was the English common law, which contained the rule of primogeniture. On the demand of the Parsees of
Bombay, a rule was laid down in 1837, by which 1/3 went to the widow and the residue was equally divided among children, which took away the rule of primogeniture but introduced the above rule based on English statute of Distribution\textsuperscript{112}.

This rule was not applicable to Mofussil Parsis. Thereafter, the demand was made to have one separate law of inheritance for all the Parsis in India. In response, the Parsi Intestate Succession Act, was passed in 1865. The material changes made by this Act were that the widow and the daughters of a Parsi dying intestate in the mofussil who were only entitled to maintenance, for the first time, got a share in the property (widow half the share of the son and daughter half the share of the widow). The Parsi Intestate Succession Act became the part of the Indian Succession Act in 1925. But it was amended in 1939 with the object of improving the position of widow, daughter and widows of lineal descendants of the Intestate. The Act excluded the widower of the predeceased daughter from inheritance and allowed the father and the mother to share the property of their son in presence of his widow and children.

The rules however, are different for male\textsuperscript{113} and female\textsuperscript{114} like Hindu and unlike Muslim law. But like Muslim law a Parsi women is entitled to only half the share of her counter relation, the most inferior position being of the mother in the scheme of succession e.g. If a male Parsi dies leaving behind widow, a son, a daughter, father and
mother then mother gets one share father gets 2 shares, daughter gets 2 shares, son and widow each gets 4 shares.

If a female Parsi dies intestate leaving behind widower, a son and a daughter then all get equal share. However, her parents are not entitled to succeed in such a situation. A son is entitled to an equal share in mother's property along with the daughter but the daughter is not entitled to the same right when she inherits the property of the father along with the son.

After 1939, there is no change introduced in this law. At that time these rules conferred better rights on women than the then existing Hindu and Muslim laws. But with the passage of time, these rules have become out of place with the progressive trends in society.

The Muslim and Parsi women's initial position was better than Hindu women regarding the inheritance right. But both these laws failed to respond to the modern principle of equality embodied in our constitution, as no changes have been made after 1950.

Christian Law Of Inheritance:

Sections to of the Indian Succession Act state the law of inheritance applicable to non-Parsis. Predominantly it covers Indian Christians, as other main communities, viz. Hindus and Muslims, have their own separate personal laws of inheritance and Parsis are provided separately by the Indian succession Act itself as seen above. Therefore, we are
categorising sections to of the Indian succession Act as Christian law of inheritance.

The Indian Christian women under the Indian Succession Act 1925, hold property with absolute right and have a definite share. The provisions of this law are based on the principle of equality. There is no discrimination between male and female heirs who succeed to the property of the deceased. Like Muslim law, the rules of the distribution of the property are same for both male and female dying intestate.

A comparison of women's right to inheritance under all the personal laws shows that they are not treated on par with men. Their unequal legal rights to property clearly indicate their low position in the society. Further, ignorance of legal rights deprives them even of such unequal rights. And whenever they are aware of their rights societal pressures and conditions inhibit them from enforcing their rights.

In the absence of social security and inadequate opportunities of employment and with the percentage of the illiteracy, a woman without financial security faces destitution in our country. It is true that in a country where 50% of the people are living below the poverty line, measures for ownership of property, will benefit only a limited section. However, for this section, ownership of property will make women independent that will undoubtedly help improve their status.
Notes


4. Id. at p. 340


6. Supra, Note 3 at p. 25.

7. Supra, Note 2 at p. 41-60. Upanayan is a samskar which enables a person to take further eduction.


11. Id. at p. 40.


14. Art 14: The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

15. Art.15(1) : The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

16. Art 15(3) : Nothing in this article shall prevent the State from making any special provision for women and children.
17. Art. 39(a).
19. Art. 39(e).
20. Art. 42.

21. The public corporation like LIC also has avoided giving maternity benefits to women.


23. Id. at p. XII.

JDM Derret, "The Legal Status of Women in India from the most ancient times to the Present Day ", AIR 1956 Journal p.73.

24. Supra, Note 3 at p. 31.
25. Id. at p. 32.

27. e.g. The Bombay Prevention of Bigamous Marriages Act 1946.

28. Supra, Note 26 at p. 647.

29. Ibid.
See also P.V. Kane, History of Dharmashastra Vol II Bhandarkar Institute, Pune (1941) P. 550. Also see Vol III (1946) p. 773.

30. Sec. 5(1) of the HMA.
31. Sec. 17 of the HMA and SS 494 & 495 of IPC.

33. Sec. 5(iii) of the HMA.

34. Sec. 5(ii) of the HMA.

34A. Sec. 9 of the HMA.

35. Sec. 10 of the HMA.

36. Sec. 11 & 12 of the HMA.

37. Sec. 13 of the HMA.

38. Sec. 25 of the HMA.

39. Sec. 18 of the HMA.

40. Sec. 13-B of the HMA.

41. Sec. 2(a) of the Child Marriage Restraint Act, 1929 (amended from 1978).

42. Sec. 7 of the HMA.


44. Id at p. 8.

45. Id at p. 90.

46. The age at which a person is matured physically to fulfill the object of marriage. The age of puberty under Muslim Law is presumed to be 15 for girl as well as for boy unless contrary is proved.

47. The provisions of the Child Marriage Restraint Act do not declare the marriage invalid inspite of non-fulfillment of the condition as to age. Therefore, prescription of different age by the Muslim Personal Law does not make any difference at functional level.

49. Id. at p.53.

50. Ibid.

51. Supra, Note 43, p.98.

52. Ibid.

53. Id. at p. 196.

54. Id. at p.132.

55. Supra, Note 48 at p. 78.


56. Supra, Note 43 at p. 154.

57. Sec.2 of the Act. The Muslim Wife can dissolve her marriage on the following grounds:
   a) Missing husband b) Failure to maintain c) Imprisonment of husband d) Impotency e) Failure to perform marital obligations f) Insanity g) Optional puberty h) Cruelty i) Any other ground under Shariat.

58. However, the Islamic Law recognised dissolution of marriage by the common consent of the spouses known as Khula and Mubarat - see Supra Note 43 at p. 163.

59. This is a debatable issue. It was pointed out by the Supreme Court while deciding *Shah Bano's case* (AIR 1985 S.C. 945) that Aiyet 241 of the holy Quran states the responsibility of the husband to provide maintenance to his divorced wife also. However, this interpretation of the Quran itself is challenged by the Mallas & Maullavis today stating that there is no such responsibility on Muslim husbands!


61. Sec.10 of the IDA.

62. Ibid.

64. Sec. 37 of the IDA.


71. *Supra*, Note 10 at p. 262.

72. Sec. 2 of the Act.

73. Sec. 3 of the Act.

74. Sec. 8 of the Act.


77. Sec. 6 of the Act.
78. Sec. 4(a) of the Act.
79. Sec. 6(a) proviso of the Act.
81. Supra, Note 48 at p.163.
82. Tayabjee F.B., Muhammeden Law ; N.M.Tripathi, Bombay (1940) p.274.
83. Supra Note 43 at p.198.
84. Ibid.
85. Supra Note 65 at p.128.
87. Supra Note 26 at p.569.
88. Sec. 7 of the Act.
89. Ibid.
90. Sec. 9 of the Act.
91. Sec. 8 of the Act.
92. Supra, Note 10 at p.39.
93A. Das R.M. Women in Manu and His Seven Commentatoes (1962) p.178.
94. जाना में गुप्ता के नाम पर विद्यार्थी शिक्षा जाने के लिए।
95. Supra Note 93 at p.143., Jamna v. Machui Sahu (1879) ILR 2 All. 315.; Harmadabai v. Mahadeo (1908) ILR 5 Bom 103.; Punna v. Radha (1903) ILR 31 Cal 476.
96. Id. at p.144.
97. Ibid.
97A. Gharpure J.R. Hindu Law (1931) Bombay p.344.
98. Supra Note 3 at p.217.; see also Banerjee G, Hindu Law of
Marriage and Stridhan (1978).

99. Id. at 220.

100. Supra Note 93 at p.145.

101. Id. at p.54.

102. Id. at p.59.

103. Id. at pp.162,163.

104. Id. at pp.38,43.


108. See Sec.8 and Sec.15 of the Act.

109. Supra, Note 82 at p.828 et.sq.

110. Id. at p.782.

111. Supra, Note 65 pp.137.140.


113. Sec. 51 of the Indian Succession Act.

114. Sec. 52 of the Indian Succession Act.

115. Sec. 32 of the Indian Succession Act.