CHAPTER-II

LEGAL STATUS

"If a person is murdered because of his or her politics, the world justifiably responds with courage. But if a person is beaten or allowed to die because she is female, the world dismisses it as 'cultural tradition'" ¹

The best form of the Government is that which provide freedom to decide way of life human beings want for themselves and give an equal opportunity for exercising their capabilities and strength they have. The task of social reconstruction, development and nation building, all call for major changes in the social order, to achieve which legislation has been one of the main instruments. Therefore, it has become the main characteristic of modern society to put heavy reliance on law to bring about social Justice. Whether people support it or not they have to mould their behavior according to laws due to fear of punishment. So it can be regarded as a direct norm setter or indirectly providing institutions, which accelerate social change by making it more acceptable. However, for such of goal, social changes to come about. Before a law to become, an active social force there should be a
correlated cultural process, the internationalization of the new pattern of behaviour in the individual. Therefore, from this point of view legal status of woman felt as an important issue, to be discussed here.

As the chapter is related to legal status of women, it is important to be clear about the term 'legal status.'

The 'Status' of a person or a group of persons is closely associated with the role performed by the person or the group of persons in the society. In the international Encyclopedia of the social science, Zeldtch has used the term 'Status' to refer either as a synonym for 'any position in the social system' i.e, the concept of status in the Lintonian sense' or to any sort of hierarchical ordering of power, wealth or honour. When we speak of the status of women, we actually refer to the factors or determiners like actual treatment given to women. The word 'legal' means which is connected with the law or which is allowed or required by the law. The real status of women can be judged only by analyzing their social political economic and legal rights enjoyed by them. The social status of woman is already discussed in the first chapter. The focus of this chapter is on the legal status of women and related laws passed in India from time to time and the initiative by the national and international organization to remove the legal disparities from which the Indian women suffered. The first part of the chapter, deals with the major laws passed by the British Government in India before 1947. Consequently, it deals with the laws passed by the independent Government of India and the constitutional attempt and other special initiative taken by the Government to bring Indian women legally at par with Indian men. Lastly, it deals with the various dimensions of implementation of these laws and awareness and how implementation can be made effective.
Under British Rule:

The social evils reached their climax in the 18th century and the status of women deteriorated, which is recorded as the darkest period in the Indian history. By this time, the British authority was established in the country and during the first century of British rule (1757-1857). Indian society was more rigid and faced several and serious social evils. The right of ‘Stridan’ was still in practice, but right of property of women was denied. As they could not earn money by employment or service they had to depend on male member of the family for their survival.4

From early parts of 19th century, social reformers became alert against the sufferings of women and various reform movement started. But when various social movements could not achieve expected success regarding enhancement of women’s status, the enactment of social legislation became essential. So they started to take initiative to remove discrimination between the sexes and enact some special protective legislative measure for women by the help of British Government. In this regard, British Government’s initiative was not satisfactory, because the British Policy in the field of family law had crippling effects on women because they adopted a policy of letting Hindus be governed by Hindu Law and Muslims by Muslim Law in matters of family relations on the ground of religion. This resulted stagnation with the result that the two systems could neither absorb nor adjust to socio economic changes. As a result still today law does not in fact answer the needs arising from major social changes. However some legislations enacted during the period 1829 to 1947 for the improvement of legal status of women by British Government are as follows.
(i) **Law against 'Sati' in 1829:** Although female infanticide had been banned earlier, the most significant was the legislation, which penalized the practice of 'Sati'. According to this act, due to husband's death, willingly or unwillingly the dying woman and people encouraging or forcing her to die, are declared criminals and punished. Raja Ram Mohan Roy reinterpreted the Vedas/Shastras motivated the public opinion in its favour and continued fighting against this practice. However, the practice of sati has been reduced largely in India, although it still exists.\(^5\)

(ii) **Widow Remarriage Act of 1856:** Widow Remarriage Act was legalized on 26 July 1856. The first Hindu widow remarriage took place at Calcutta on 7 December 1856 under the guidance of Vidyasagar himself who was strongly in favour of widow-remarriage. At that time child marriage was popular leading often to early widowhood.\(^6\) But even after so many years, the situation regarding widow remarriage are seen very rarely in the form of exceptions only. Very few men are ready to marry a widow and young widows do not take initiative to get married due to fear of social criticism.

(iii) **Registration of Birth and Death Act of 1870:** By this Act Registration of every birth and death with the municipality was made compulsory. It was a step taken by the Government to check the practice of female infanticides from the society.

(iv) **The Indian Succession Act, 1863, (Act x of 1965):** In the early Hindu Society, the status of woman was not considered from legal point of view. The Hindu law of inheritance had deprived women of the right to property (except the right to their stridhan), and as a result they...
were completely dependent on the man. This act was the first step towards conferring economic security upon Indian women. The Indian Succession Act 1865 laid down that ‘no person shall, by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if not married to that person’.

(v) **The Married Woman's Property Act, 1874:** The married women’s property bill was a natural consequence of succession Act of 1863. The Bill was passed into Act III of 1874, which was the first law extending the scope of Stridhan. It declared that the wages and earning of any married women, any property acquired by her through the employment or her art and skill, and all her savings and investment shall be her separate property and that a married woman can file a suit in her own name in respect of her own property. This Act, though a radical one, did not create stir in Hindu Society because, until 1923, the Act applied only to Indian Christian women. Married women belonging to Hindu, Mohammedan, Sikh and Jain communities remained outside the purview of the Act. As the national movement gained in strength, the early 20th century showed some activities in the legislative field. The plight of widows without any means of their own, depending entirely on the family, led to the passing of the Hindu Women’s Rights to property Act in 1929 followed by another in 1937. These laws while they made the widow less dependent financially during her life time, stopped short of giving her any substantial rights of ownership since her rights to property was only for life.
(vi) **Child Marriage Restraint Act.1929**: Child marriage was very common during that time. As a result, many child brides were dying due to ill health and childbirth. The destructive effects of child marriages forced social reformer to prevent child marriage by enactment of law. Therefore, in 1929 Child Marriage Restraint Act, was passed in which, minimum age of marriage for men and women was fixed at 18 years and 14 years respectively. Again, this to Act could not achieve any proper goal as the minimum age of marriage for the girls was not yet satisfactory. As a result this was amended later on to raise the age of marriage.

**Muslim Personal Law (Shariat) application Act 1937**:  
This Act brought all Muslims under the Act and by this Act Muslim women got the right to divorce in 1939.

**Codification of Hindu law:**  
Codification of Hindu law began in 1941 with the appointment of Rau Committee. The demand for major changes no longer marginal ones grew by the social reformer and women organizations at was also the result of the untiring efforts of Gandhiji, who wanted women to suffer from no social or legal disabilities. The inferior position of women in all matters, guardianship, inheritance and divorce had on effect on the personality of the women. Under Gandhiji’s leadership the demand for improvement and modernization of the law grew and ultimately the Government was compelled to move. A Committee was constituted under the Chairmanship of Sir B.N. Rau, to codify Hindu laws. The sub committees formed to discuss issues of marriage, divorce, succession; guardianship, adoption, maintenance etc. submitted and
resubmitted their reports. But no effective measure could be taken before independence.

It is significant that the same body which sitting as the Constituent Assembly, adopted the equal rights clauses in the Constitution without any debate, while functioning in its capacity as the central legislature blocked the Hindu Code Bill, which attempted to provide only partial equality to women.

Though the attempt of providing legal security to women was started during the British rule, but actually it failed to do so. Partially it was due to British Policy and partially for the conservative outlook of the orthodox section of the society. Therefore, after independence it became the responsibility of the Indian Government to remove the legal disparities based on sex and improve the status of women. Nehru wanted to introduce legal changes so that women could be equal to men before law, and without which she may not be respected within the family.

**Legal Status of Women in Independent India:**

**Constitutional Measures:** After independence, Indian relied heavily on legislation in its efforts to usher in a society where there would be no discrimination or inequality. It became necessary to provide constitutional provisions for uplift of the legal status of Indian women.

With regard to woman, the constitution contains many negative and positive provisions, which go a long way in securing gender justice. The history of suppression of women in India is very long and the same has been responsible for including certain general as well as specific
provisions for uplifting the status of women. The rights guaranteed to
the women are at par with the rights of man and in some cases, the
women have been allowed to enjoy the benefit of certain special
provisions.9

The important areas have been discussed here related with the
legal status of women.

The Preamble: The Preamble to the Indian constitution contains
various goals including “the equality of status and opportunity” to all
the citizens. This particular goal has been incorporated to give equal
rights to the women and men in terms of status as well as opportunity.

Other Constitutional Guarantees: The important provisions are as follows

1. Equality before law and equal protection of law to any person
without discrimination (Art-14)
2. Prohibition of discrimination on grounds of religion, race, sex,
place of birth or any of these among citizens (Art15.1)
3. Non discrimination between citizens in regard to access to public
place or availing of public utilities. (Art 15.2)
4. Equal opportunities for all citizens in public employment. (Art
16.1)
5. Equal civil rights (Art 19)
6. Equal franchise and political rights(Art. 325-326 etc)
7. Equal rights of citizens to adequate means of livelihood. (Art 39a)
8. Equal pay for equal work for both, men and women. (Art 39/d)
9. Equal Justice and free legal aid. (Art 30A)
10. Uniform civil code for all
Except the above mentioned clauses some other measures were taken to protect women's cause. The principle of protective discriminations finds expression in the following provisions:

1. The State may take special provisions for women and children in the matter of use of public places and entitlement to public utilities (Art 15.2)

2. Traffic in human beings and beggars are prohibited. (Art 23)

3. The State shall secure just and human conditions of work and maternity relief to working women. (Art 42)

4. It is the fundamental duty of every citizen to renounce practice derogatory to the dignity of women. (Art 51/A/e)

5. Not less than one/third of the seats in and offices of chairpersons of panchayats should be reserved for women. (Art.243-D)

6. Not less than one third of seats in the municipalities should be reserved for women. (Art 243-T)

7. State legislature may be provide law for reservation of the office of Chairpersons of Municipalities in favour of women (Art 243-T:4)

Thus, the constitution of India seeks to secure legal status of Indian women providing theoretical initiative through the constitutional mandate. Thus within the first decade of independence, a package of reforms in Hindu law, popularly known as the Hindu Code Bill was enacted in the Parliament in reference to Hindu marriage, divorce and maintenance, Hindu Succession adoption guardianship and so on. The reform of Hindu personal law has a positive effect on social change in particular on the promotion of social and legal rights of Hindu women as wives, widows, divorces and heirs. But as the British rule perpetuated a system by which each community remained governed by a different
system of law & it never intervened in the sphere of personal law on the ground of religion, different communities continued to be governed by different personal law.

**Legislative measures after independence:**

Apart from equal constitutional provisions, separate laws have been enacted regarding age of marriage, widow remarriage, polygamy, divorce, dowry, right on property adoption and guardianship of children, maintenance and expenditure and abortion etc to give legal security to Indian women. But the question before us after so many years of the promulgation of the constitution is, “Where women are today? Can they say that constitutional provisions and legislative measures have been fulfilled?”

To understand the legal status of Indian women after independence it is important to go through the legislation made by the Indian Government during this period and the effect of such legislation.

**Social Laws after 1947:**

(i) **Special Marriage Act (1954):** This act provides for a secular marriage irrespective of the religious affiliation of the parties contemplates the solemnization of marriage between adults under its provisions, as it fixes the minimums age at 21 and 18 for males and females respectively. The legal position noted in this law is a strong and clear indication of prohibition of child marriage. Under this Act, parties are required give notice to the marriage officer of at least 30 days.
(ii) Hindu Marriage Act 1955:

Equality cannot be a reality for a woman unless her legal rights in the family are secured. An attempt to improve the legal status of women was made by Hindu code Bill. The first important legislation in the series was the Hindu Marriage act 1955. Before this law passed, a Hindu man could marry more than once. This law has established the principle of Monogamy for all Hindus including Buddhists, Jains and Sikhs. Bigamy is prohibited among the Christians and Parsis also. However, among the Muslims men and women are not on the same footing as a man can have four wives at a time and they are not in purview of this act and are guided by Muslim Personal Law.

(iii) Divorce Act 1956:

Divorce was unknown in Hindu Law. However, the concept of 'Linen for marriage' or the sacramental natures of marriage gradually eroded and remedy was provided to the spouse through the legislative measure as divorce. The Act provided if either the husband or the wife withdraws from the society of the other without reasonable excuse, the aggrieved party may initiate legal proceedings for decree of restitution of conjugal rights. This is a right available to both the spouses i.e. wife and husband equally.

The various grounds, on which, a husband and a wife can obtain divorce, are (a) living in adultery, (b) Conversion to other religion, (c) insanity, (d) incurable form of leprosy, (e) venereal disease, (f) renunciation, (g) where the respondent has not been heard of as being alive for a period of seven years or more, (h) failure to resume
cohabitation for a period of two years after the decree of judicial separation.

Two additional grounds have been given to the wife to obtain a divorce such as:

(1) If the husband has more than one wife living, and
(2) If he has been guilty of rape, sodomy or bestiality.

(iv) **Succession Act 1956:**

This act gave women the same right in the matter of succession as a male. Under the Hindu law, joint families follow two schools. The Dayabhaga School gives importance to the father and property right will be enjoyed only after expectancy. According to the Mitakshara School, the joint family has a small nucleus, known as coparcenaries of which no woman can be a member and it is composed of the father and his descendants of male line. Therefore, the government ensures the act of succession 1925, to consolidate different laws governing succession of groups other than those governed by Hindu or Muslim law. To give equal share to female member of the family this act has been amended, recently.

(v) **Hindu Minority Act and Guardianship Act 1956:**

This act codified the law but regarding the guardianship of children, it has retained the superior right to the father. It lays down that a child is a minor till the age of 18 and the natural guardian for both boys and unmarried girls is the father and after him the mother. The
mother’s right is recognized only to custody in the case of children below five. However many amendments have taken place regarding this Act and the judgments are guided by the Supreme Court rulings and the mother is also in equal footing with the father at present.

The Muslim law distinguishes between guardianship and custody. Guardianship is related to the minor’s property and custody to the minor person.

(vi) **Adoption and Maintenance Act - 1956:**

By this act, a Hindu can adopt either a son or a daughter since the religious purpose has given place to a secular one and the husband can no longer give or take in adoption without the consent of the wife. Moreover, a woman can now adopt a child even if she is unmarried; widowed or divorced.

The right to maintenance forms a part of personal law and hence it not uniform. Hindu Muslims and Christians have their own personal laws regarding these.

The above-mentioned laws attempt to establish the legal rights of women and tried to secure their position. Still women faced some other problems, as they are women. To end these social evils some other laws has been enacted.

**Some other Social Laws:**

**The Dowry Prohibition Act, 1961:**

The Dowry Prohibition Act of 1961 was passed to curb the social evils of dowry, which affects the dignity of women. Dowry is any
property in cash or kind given by the bride’s family to the bridegroom’s family. It may be given before or after marriage by one party to another as ‘consideration for the marriage’. The law remained a paper tiger for many years, and number of deaths of young brides continued to rise. The Act was amended in 1984 and the words as ‘consideration for the marriage’ have been replaced by the words ‘in connection with marriage’. Under this Act, the aggrieved persons themselves on a recognized welfare institution on organization can fete a complaint. But this Act also failed to stop the offences related to dowry and another attempt to curb the rising rate of dowry death is made by amending the criminal law.  

The Criminal law, second Amendment Act, 1983:

Yet the curse of dowry death is increasing. It is another example where law fails to reform society. Despite the fact that girls are educated like boys, they are given dowry in marriage. The social evil has not been checked in spite of efforts of the Government and non-government institutions, and dowry demands are on the rise. Education has increased this evil although it was thought that educated people would work for its abolition.

Medical Termination of Pregnancy: MTP—1971:

The demand for making abortion legal had been there for many years. Because unwanted conception has ill effects on the physical, mental and social life of a woman. For saving them from these difficulties MTP was passed in 1971, according to which abortion was accepted legally and women has right to choice for motherhood. This is primary a welfare measure to protect the health of women, though it has a family planning aspect. But in actual field utilization of this Act is less
for planning the family but more for getting rid of unmarried motherhood. Although the situation arises very rarely but still this Act has increased the possibilities of improving the distorted life of such women.

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994:

Another negative development has taken root: more and more urban women are getting voluntarily or otherwise the female fetus aborted. The number of women who get the female fetus aborted is increasing every day. The Government felt that abuse of techniques for determination of sex of the fetus leading to female feticide is discriminatory against the female sex and also affects the dignity and status of women. This realization led the parliament to pass the above Act, which came into force from 1.1.1996. But till today crime against the female child in womb in the name of pre-natal sex-determination tests is being committed and legislative measures has not been proved sufficient against this crime.

The Indecent Representation of women (Prevention) Act-1986:

In 1986, an Act has been passed accordance to which picturisation of women’s body in such a manner in which is shameful or disrespectful for women has been forbidden. It ban’s all the advertisements, publication books and magazines which demonstrate indecent image of women which spoil the character of youngsters also. But usages of women for advertisement and indecent picturisation of their parts of body is continuing. Implementation of this law is not given due emphasis.
The Immoral Traffic (Prevention) Act, 1956:

Article 23rd of the constitution of India, prohibits trafficking of humans. The Right against exploitation is a fundamental right, which aims at putting an end to all forms of trafficking of human being. On the light of above circumstances, the law was passed by the parliament. The Act underwent two major amendments in 1998 and 1986, which introduced radical changes in the scope of the legislation, extending to include the persons covered under the definition of prostitution etc. The purpose of the Act was to inhibit or to abolish commercial vice, namely, traffic in women, men and children for the purpose of prostitution as an organized means of living. The aim was not to render prostitution ‘per se’ a criminal offence or punish a woman merely because she was a prostitute herself, what is punishable under the Act is sexual exploitation for commercial purpose or to living there on.

The Commission of Sati (Prevention Act 1987.):

This Act was enacted to provide for more effective prevention of commission of ‘Sati’ and its glorification and for matters connected with it. Section 4 of this Act provides that if any person commits sati, who ever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and also liable to fine.

Although sati had been abolished in 1829, it was from the 1960s onward that once again began to hear of women committing the practice again. After the case of Roop Kanwar in 1987, what worried the Government and the people was not as much as the ritual more than
anything else, it was the glorification of the practice that was considered dangerous.15

The Family Court Act, 1984:
Under this Act Government of India established family courts in order to facilitate quick decision on marital disputes. Facility of informal agreements between the husband and wife are also provided. However, in most of the cases efforts are made that the wife agrees to accept the husband’s points of view. In this situation, generally the woman is sent back to the same bad environment from which she wants to escape and then again her exploitation starts afresh. According to Indira Jaising, what is totally overlooked is the fact that, the so called preservation of the institution of marriage is achieved at the cost of the woman, who remains a prisoner within it and is subjected to extreme mental and physical cruelty.16

The National Commission for women Act-1990:
The Act was enacted to constitute National Commission for women and to provide for matters connected herewith or incidental thereto. The Act makes provisions relating to investigation and examination of all matters relating to the safeguard provided for women, under the constitution of India and other laws. The Act deals with the matters relating to deprivation of women’s rights, non-implementation of laws enacted to provide protection of woman and to achieve the objective of equality and development.

The Protection of women from Domestic Violence Act, 2005:
Domestic violence is undoubtedly a human rights issue and serious deferent to development. The Vienna Accord of 1994 and the
Beijing platform of Action (1995), both have acknowledge The United Nation's Committee on CEDAW (Convention on Elimination of All Forms of Discrimination Against women) in its general recommendation No.XII(1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family. 17

The phenomenon of domestic violence are widely prevalent, but has remained largely invisible in the public domain. With a view to providing, a remedy under the civil law it is intended to preserve the family and at the same time provide protection to victims of domestic violence. The protection of women from Domestic Violence Act, 2005, has been enacted by the parliament. However, it was an attempt to secure women's position in the family, but it continues. Sometime 'aggrieved person' due to some pressure, fear to take the legal help or sometimes law became insufficient to punish the culprit.

**Legal Service Authorities Act 1987:**

Through this Act, the provision for free legal aid to women has been introduced.

**The National Commission for women Act: 1990**

The NCWU has created the National Commission for women. This Act has been passed with the purpose of studying and monitoring all matters relating to legal and constitutional provisions. The commission would also examine the laws to suggest amendments. It will also see to the implementation of the laws.
Muslim Law:

A by-product of the policy of non-intervention in family law by the British Government brought the difference among the women of different religions and communities in India. The personal law, is the law whether codified by the legislature or not, but is laid down by the religion which governs a particular individual of particular religion. Among the Muslim schools of law – the Sunni and Shia schools are important besides the others. This was partially remedied by the Shariat Act 1937, which bought all Muslims under the act and practically abrogated the customary practice, which had grown over the years.\(^\text{18}\)

Marriage is regarded as a contract under the Muslim Law for the purpose of procreation and legalizing of children but full equality of sexes can hardly be possible in a legal system, which permit polygamy, and a social system that tolerate it.\(^\text{19}\)

According to the Muslim law, consent of the parties to marriage is essential. A wife is entitled to have dower or Mehr, which is the amount of money, or property to which a wife is entitled in consideration of marriage.

In case of divorce under Muslim, a husband has an absolute and unlimited right to repudiate the marriage at his will. This is known as talaq. A Muslim wife has no such right to dissolve her marriage. But unwritten and traditional law has given some grounds for divorce spelled by the law, such as cruelty, husband's imprisonment for seven years and failure to fulfill his material obligations for three years. Moreover, dissolution of Muslim Marriage Act 1939 has added further
grounds. However, the power of the husband to pronounce “Talaq” unilaterally remains and has not been curtailed either by judiciary or through legislation. As long as this absolute and unlimited right remains, the position of Muslim wife will remain insecure and her status cannot be raised. 20

Regarding the Muslim law of Guardianship father’s dominant position is recognized and his rights are very wide, but there is a distinction between guardianship and custody. The term guardianship, is usually used with reference to the guardianship to property. The father is the natural guardian and has control over both the property and person of the child. The mother can never be the natural guardian, but the father may appoint her as testamentary guardian. Both the Sunni and Shia schools agree that in case of a minor married daughter the mother must retain custody until her daughter has reached puberty. But regarding guardianship women have the inferior position.

The right to maintenance forms a part of personal law and hence is not uniform. Under the Muslim law the maintenance of the wife is the highest obligation of the husband. She has however, to be accessible to the husband and obey his reasonable commands. However, her right to maintenance lasts only as long as she remains a wife. If she is divorced, she loses her right of maintenance and is only entitled to it for three months (the period of ‘iddat’) After this period she has no further claim and it is this which has created a discrimination between the system and the other. Recently Shah Banu’s case created lots of uproar among Muslims as well as non-Muslims regarding this issue where the Supreme Court had given a landmark judgment awarding maintenance. 21
The Muslim Law of Succession is different from the other indigenous system of India. No woman is excluded from the inheritance, based on sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property in lieu of maintenance. The share of each heir is specified, the female heir receiving a share half the size of the male heir’s. Women are benefited by the provision of restriction on the right of a person to will away or give away his property. In the Muslim personal law also, the legal status of women is not much better than their counterpart. They have yet to settle their position against Polygamy, Talaq and social restriction such as ‘Purdah’.

**Legislation on Women Others than Hindus and Muslims:**

Regarding marriage, Hindu Marriage Act of 1955, guides Buddhists Jains, and Sikhs and as a result all are under the principle of Monogamy. Bigamy is prohibited among the Christians and Parsis. The registration of marriage is compulsory among the Parsis and Christians also.

Regarding Divorce, among the Christians, the husband can ask for divorce if the wife is guilty of adultery. But the wife must have an additional ground as incestuous adultery, bigamy with adultery or cruelty with adultery. The Parsi men and women can ask for divorce on some specified grounds as insanity, adultery or desertion. In addition, the wife has the right to seek divorce if the husband forces her into prostitution.
Regarding succession, the Indian succession Act of 1925 is applicable to the persons such as Indian Christians Jews and those married under the special Marriage Act, 1954. But among the Christians in India, there are diversities in laws. The Travaneore High Court held that the Indian succession Act did not supply to the Christian of the state and therefore, the Christian in Kerela and those outside are governed by different laws. The Christians of Goa continued to be governed by the Portuguese Civil code. The code makes no distinction between brothers and sisters, but it relegates the widow to a very low position. In case of legal heirs, sons and daughters get equal share of property. 

Regarding Parsis, according to rule of intestate succession, the male heir has a double share to that of a female heir of the same degree. Legislation have tried to provide women proper legal status but as long as the personal laws will continue there cannot be equality between men and women. Women suffer religiously and socially due to some fundamentalist attitude that can be ended by a common law for women within India. Otherwise, under the personal law women of different communities and religions will have different legal status, may be discriminating in different ranges which even law will not be able to protect her.

Some Labour Laws effecting Professional woman

In India, there are a number of legislations relating to women’s right and status at the work place. These legislations are intended to promote the constitutional value and honour the International labour Organization’s (ILO) conventions and recommendations.
In the world of today, any discrimination between the two sexes in the occupational field has no chance to survive and sooner the better females are provided equal opportunities and status in labour market with males. To give proper security to workingwomen, some legislative measures also have been taken by the Government.

Among the other labour laws the Maternity Benefit act is the important one.

(1) **The Maternity Benefit Act:** Article 42 of the constitution of Indian directs the state to make provisions for securing just and humane condition to work and for maternity relief. In pursuance of these objectives, the parliament has passed the Maternity Benefit Act 1961 to regulate the employment of women in certain establishment’s periods before and after childbirth to provide for maternity and other benefits. The enactment has been amended recently in 1995 to make it more effective and beneficial for women. This Act is applicable to women working in factories, mines plantation and shop and some other Govt. establishment. Under this Act, the woman has a right to maternity leave up to twelve weeks i.e. six weeks after the delivery. The maternity benefit consists of payment of average daily wages and provision regarding nursing break. In case of miscarriage or abortion, a woman is entitled to six weeks paid leave. The eligibility for maternity leave is that the woman before availing the leave must have worked for eighty days in that establishment or organization. The Act does not stipulate any limitations on the number of occasion on which maternity leave could be availed. However, the Act does not apply to any such factory or other establishment to which the provisions of the Employees’ State Insurance Act are applicable for the time being. Maternity benefit act,
presently has been amended with much addition where paternity leave also considered to be provided for newborn Childs father.

(2) The Central Service Leave Rule, 1972: As regards the Central Government employees, the Central Service Leave Rules, 1972 applicable to them. A women employee is entitled to 90 days leave with pay from the date of delivery. Haryana area Government raised it to 180 days in legislation in March 1992. Maternity leave can be combine with any kind of leave. Leave in further continuation of the stipulated 90 days up to 60 days leave in addition, allowed in case of illness of the baby, when the presence of mother is necessary. Except these, all the state government also has their own service rules for employee where the women professionals are also included.

Thus, in various ways, many attempts have been made to protect women’s rights, but bad practices of social evils continue to harass women in different ways. Sexual harassment is one of them.

Without these laws some other initiative have been taken for the benefit of working women. Such as ,

Posting of husband and wife at same station;

The government of India on June 5, 1986 enunciated a policy by which as far as possible and within the constraints of administrative feasibility, the husband and wife should be posted at the same station to enable them to ensure the education and welfare of the children. It was also made clear to all concerned that any action amounting to violation of this instruction would re adversely commented upon in their confidential report. 27

The goals of the policy are to bring about advancement, development, and empowerment of women. With other objectives of the law, equal access to women to equality, education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc. are some of the important objectives.28

In September 1979 the Govt of India signed the convention for elimination of discrimination against women (CEDOW) but ratified the same 13 years later on July 1993. from the time signing CEDOW to the time of its ratification several laws were passed and amendments made incorporating the sexual harassment at work place.

Sexual harassment at workplace:-

One of the serious problems of women worker is the sexual harassment at the work place. Sexual harassment has been encountered in various forms or others by every working woman whichever profession she happens to be in. Few women escape sexual harassment, such as, lewd comments, an unwelcome look or touch whether they are walking down the street or working in an office. It can be of the most destructive experiences for a woman employee and it has been increasing with increasing participation of women in the workforce in both organized and unorganized sectors.

Sexual harassment in its broader sense refers to the unwanted imposition of sexual requirements in the context of a relationship of unequal power. The Supreme Court of India, in Vishaka’s case,29 has
captured the various forms of sexually harassment to include any unwelcome sexually determined behavior, direct or by implication and includes unwelcome physical contact or advances, a demand or request for sexual favours, sexually coloured Jokes/remarks, display of pornography and any other unwelcome Physical, verbal or non verbal conduct of a sexual nature.

In India, there is no specific law or policy relating to sexual harassment. At the time of drafting the Indian Penal Code in 1860, it was unimaginable that Indian women will work outside the four walls of their house. Moreover, no one had envisaged a time when fifty percent women joining the workforce would experience incidents of sexual harassment at their workplaces. The Indian Penal code therefore, did not adequately provide for specific protection of women from sexual harassment at work place.

According to the guideline, an effected person can simultenously avail of the criminal laws(however limited) in situation of sexual harassments are

i. where such conduct amounts to a specific offence under the Indian penal code or under any other law, the employer should initiate appropriate action in accordance with the law and file a complain with the authorities.

ii. Complains or witness must not be victimised or discriminated against while dealing with complaints.

iii. Where sexual harassment takes place as a result of an act or omission by any third party or outsider the employer and/or person in-charge must take all step necessary and reasonable to assist the effected person in terms of sup[port and preventive action.
iv. Without these each organization may adopt its own remedial measures subject to the nature and intensity of the harassment, within a declared policy such as compensation, issue a warning to the harasser. The harasser can be asked to give an apology or transferred or dismissed.  

Due to societal and cultural peculiarities prevailed in India, most workingwomen have come to consider sexual harassment as an “Occupational hazard” and society in general thinks it as a normal behaviour of male domination. Perhaps it is because of this dismissive attitude and trivialization of the issue that no real effort has been made by lawmakers to understand the issue or workout desirable amendments to cope with the situation, which can really protect and secure the legal status of women.

Limitation of Legislation:
Various Acts have been passed, through which women have been given extra benefits, along with the opportunities and facilities equal to men. But the fact is that, implementation of these Acts is rarely observed by the concerned people and so Mehta\textsuperscript{31} has stated that women have to face lot of discrimination even now. Traditional values and ideals have their full influence on the thoughts and attitudes of people. Jacob\textsuperscript{32} has commented that the value of these laws is not more than the paper on which they have been printed. There is no doubt that law helps in bringing about social change to some extent, but only through enactment of laws, change can not be brought in any society. Law related to marriage, concept of ‘Streedhan’ getting alimony after divorce, conditions of the divorce, right to property, or succession right, are not clear among majority of women. They are not much aware about
their legal position and how to protect their rights and limited sections only got the access to the system. In the employment field unorganized and agriculture sector are not always aware about the wage difference. The organized sector also is not much aware of the labour laws such as maternity leave or some other laws. On the other hand, we cannot deny that legislative measures are important. The implementing machinery at all levels has to be sensitized and made responsive to women’s needs. Awareness and knowledge of women’s rights to equality has to be created not only among women but also in the society. Women must themselves be involved in much bigger way in the judicial and the law enforcement process whether as judicial officers, lawyers, or police. The requirement is this as Mishra\(^3\) (1992) has suggested that the women have to fight their own battle. Now women themselves have to be aware and to take initiative and fight for their legal rights carefully.

The legal status of women does not depend on law and its implementation alone. Judicial interpretation of law is also very powerful instrument to establish justice and equality in society. Passing of an Act is not enough to change the social practice. The analysis of law as interpreting various social legislation needed by the Judiciary so as to provide better protection to legal status of women, otherwise these laws cannot bring justice to women.

**Evaluation of Legislative Measures:**

The struggle for legal equality and improvement in the legal status of women has been one of the major concerns of the today’s world. Whether in the internal situation of her position in the parental or matrimonial home or in the external situation of acquiring, education, skill, profession, employment etc—all these involve in the law. During
the British regime an attempt was made to change the situation (as Manu, the lawgiver has assigned women in the ‘Manusmriti’) regarding the double standards between male and female through legislation. After independence, India declared itself a welfare state. Consequently, Indian constitution, without wasting much time, through legislation, made efforts to improve women’s legal status. Various social and labour laws were passed for the benefit of women. But as Desai and Krisna Raj (1987) have written due to the lack of emphasis on the implementation of this Acts, women are not benefited much out of them. The literature dealing with women’s law also demonstrated their non-implementation and consequently the continuing exploitation of women (Kidwai 1978; Kumar 1982; Planning Commission’s Report, 1956; Mehta 1987; Gupta 1988; National Committee’s Report 1974; Antony, 1989).

Regarding the non-implementation of these laws, among many other reasons, the legal and administrative factors i.e. lapses and loopholes of laws, lack of proper supervising system; to a large extent the physiological and sociological factors i.e. traditional attitudes and conservative behaviour of people are considered to be responsible. To verify the situation if we go through the legislative attempts, some weakness of the system appears.

The most important one is the personal law by which each community is guided differently. Not all the women of India are under the same code of law. It is unfortunate that in a democratic and secular state like ours, all the women are not on the same footing. According to A.R. Desai, while the constitution of India lays down the norms of the family as equalitarian, conjugal and nuclear family of husband and wife who have entered the into the wedlock of their choice; the numerous acts, particularly dealing with personal laws give legal validity to
various diverse and contradictory patterns of family types to various communities. These enactments pertaining to personal laws permit patriarchal, monogamous and bigamous families, which not only shape different structure of families but also provide diversity and contradictions in right and obligations of various numbers within the family, as well as differentiation with regard to succession, descent, inheritance, and other aspects of family.42

Though law prohibits bigamy and polygamy, they are not extinct. Under unpleasant circumstances, the wife has to accept it as protest against it would leave her without any protection from her husband. There is another hurdle in the prohibiting bigamy is that it is not proved unless it is established. On the other hand, when a man marry for the second time without divorce, the second as ‘illegal wife deprived if any legal support for property or maintenance.43 Compulsory Registration of marriage operates as an effective check on child marriage and bigamous marriages and offers reliable proof of marriage. It ensures the legitimacy and inheritance rights of children. But there are also enough loopholes which allow disrespect to the legislative procedure.

The provisions regarding the age of marriage is frequently violated and child marriage is not uncommon and the law loses its meaning in absence of proper implementations. As a result, child-marriage has became very common in Indian society. The Act prohibiting dowry has failed miserably. Some blood curdling tales of dowry deaths, which have surfaced in recent years, throw light on the current treatment meted out to women. The provisions regarding the gifts hits at the very object of the Act, as dowry is given in the form of gifts. There is no way of determining whether the gifts and presents are
of customary nature or of excessive value. The Hindu succession Act of 1956 has not been able to bring the desired results in equalizing the women with men. As the report of the Committee on the status of women points out, Mitakshara Coparcenaries with its basic principle of right of birth of a male coparcener is the cause of unequal rights between the male and female heirs, though the Act accepted in principle the equality of sexes. Again, provision related to tenancy rights and pertaining to the right of inheritance to a dwelling house was discriminatory to women. Female heirs of a Hindu were entitled to the right of residence and even that was restricted to unmarried widowed or deserted daughters. Of the scenario has changed a lot after conferring the right to inheritance to the women also. 44

Muslim personal law also discriminate women in relation to the family life such as Marriage and Divorce. Muslim law gives the husband an absolute right to dissolve the marriage making the wife totally helpless. The husband has the legal right to have four wives. The right to maintenance of a Muslim woman lasted only as long she remained a wife. If she is divorced, she loses her rights of maintenance and is only entitled to it for three months. After the period, she had no further claim. However a recent Judgment of the Supreme Court 45 (Mohd.. Ahmed Khan Versus shah Bano Begum, AIR 1985, Sc.945) has stirred a hornet’s nest. Pointing out necessarily of a Uniform Civil Code, it stated that the Muslim husband is liable to provide maintenance for a divorced woman who is unable to maintain herself.

Out of the periphery of family, in the fieldwork also, some laws have been enacted to secure women’s legal status and save them from exploitation and injustice in the labour market. However, in this field
also discrimination exists due to shortcoming of the laws and the difference between legislative measures and their implementation.

Due to the loopholes of the legislative measures, many employers do not implement specific welfares measures for women. Many times an adequate number of women is not employed, so that the establishment is not bound to provide health care facilities, facilities such a crèche and Provision for separate latrine and urinal, as recommended by law, also, insufficient or absent in the workplace for which women employees have to suffer a lot.

**Social Security and Judicial activism:**

In this modern world, there is a concern about women’s rights and about their social security. Economical, social, political and cultural complexity has introduced insecurity for women.

We are proud of the fact that India was one of the first countries in the world to give women the right to vote. The Indian constitution is one of the most progressive constitutions of the world, and which guarantees equal rights for men and women. The evidence support that Indian women are free and equal member of the society.

However, statistics and data give different picture of women’s position. According to the census of 2001, there were only 933 women for every 1000 men. Girls and women face nutritional discrimination within family. Only 54% of Indian women are literate as compared 76% men. They face violence at home, at work place, at street and where not! Police record show that a woman is molested in the country every 20
minutes. A rape creases every 34 minutes. Every 50 minutes a woman is kidnapped and in every 90 minutes, a woman is killed.  

For human security, it is not a concern with weapons. It is concern about human dignity. Absence of social security is a threat for women. Inspire of playing important role as mother, daughter, sister, wife and breadwinner, she still belongs to disadvantaged position of account of several social barriers and impediments. They are not able to assert their rights that they are having.

Provisions have been made to provide legal security to women in national and International level. A large number of laws have been passed for the benefit of Indian women crime against women is still on the increase. The number of rape case and dowry death is going up. The number of female feticide and infanticide is increasing rapidly. 'Sati' has also been reported as late as 1987, 'despite so many laws, the status of women in India has not enhanced as was expected.' In such a scenario what can be done? How the status can be improved?

Above all judicial interpretation of law is a powerful instrument to establish justice and equality in the society. Passing of an Act is not enough to change social practice. The analysis of law as interpreting various social legislation needed by the judiciary, so as to provide better probation to women in respect of their rights.

**Critical Evaluation of enactment of laws:**

In the primitive period, human being was guided by the nature of law. Most probably, discrimination between genders was not there as much as today, with the advance of civilization, constitutional law,
legislative law, International laws etc. which came in force to provide better position to women.

However, it is unfortunate that laws made for the purpose, could not fulfill its aim. Women are becoming more and more insecure everywhere. Rape, dowry death, crime and violence are increasing day by day. Here comes the importance of the laws.

Judiciary made law is essentially interpretive and is built upon the bricks of legislative law or of the constitution. However in their justice endeavor courts may widen their roles as interpreters and constitutional guards persons to become conscience keepers of the law and the just icing system. They may attempt to minimize the distance between law and morality and law and justice; in this effort, they may transplant their notions of justice, fair play and equally, along with their subjective understanding of what constitutes morality and justice.48

The situation has some relation with when, Jawaharlal Nehru once said “There should not be any lag between the development of law and the needs of a changing society. There should be the closest possible cooperation between jurist and economists or politicians whose object is to study the changing serial fabric.”49

However, the legal status of women does not depend on law and its implementation alone. Changes of social attitude, women’s own awareness of their legal rights, proper education economic independence all are related factors with the legal status of women.
So the legal status of women, irrespective of religion, still to come in equal footing with men regarding marriage, inheritance, rights, maintenance, workplace environments etc. which can be possible only by understanding the real root of the problem in our patriarchal pattern of the society.
Foot Notes
CHAPTER-II
Legal Status


4. DIWAKAR. *R.P. Gandhi and Upliftment of Women.* Gandhi Marg.1964, P.123


7. Act X of 1865. Section 4
8. Act III of 1974, Section 1


12. ibid. P-318


15. Devendra Kiran: *Changing Status of Women in India.* P.130


19. Ibid-P.154

20. Ibid p.183
21. Desai, Neera and Maithreyi Krishnaraj
   ‘Women And Society in India.’-1987 as reported in the Illustrated Weekly of India, 29th Dec. 1985


23. The Indian Divorce Act-1869

24. The Parsi Marriage and Divorce Act 1936


27. See OM NO. 14034/10/86. Estt(b) dated the 5th June 1986.


38. Mehta, Rama 1987 Socio Legal Status of Women in India.


43. Ibid p-322
45. Mohd, Ahmed Khan versus Shah Bano Begum AIR. 1985. Sec.945