CHAPTER - VI
SUMMATION AND SUGGESTIONS

The domestic life, religion and right to property are intimately related to each other. Property always plays a vital role in the life style of individual, family, community and country. In general utility, the property allows of successive improvement in the distress.

The property rights of women have been the subject of repeated controversy till the dawn of civilization and still a talk of the day. The existence and perpetuation of gender discrimination is a blot and slur on the modern welfare states. It generates much heat and passion due to the changing concept of gender equality and the impact of the West. Underlying the laws to ameliorate various forms of social injustice towards women, is an assumption, described by Moore and followed by Roscoe Pound as the ‘social engineering.’

The transition, from the rigorous law of ancient period to the liberal and humane laws of the modern era, took several centuries. A macro-change in the composition of the infrastructure, is the need of the time. The distressing aspect of our Indian legal system is, however, that the women’s right to inherit like their other rights, is also observed more often in breach than in practice. Though the legislation is an important medium for imparting the normative values to the society but the mere existence of such mechanism even if it is not frequently restored, may not be proved profitable.

Besides legislative enactments, the resurgence of woman’s liberation movement has been accompanied by endeavours at research,
opinion polls, social surveys and empirical studies which have helped to analyze the nature and mode of economic discrimination and to suggest remedies for their eradication. As a result of growing awareness of the seriousness of the problem of domestic violence, the legislators, jurists, social scientists, reformers and activist for the women cause have come forward to alleviate the misery of females in their own way. But the women’s emancipation is still a distant dream. The reason may be that the laws are not changed sufficiently and radically but only conventionally and superficially. The laws, themselves seemingly neutral, are crypto-partial to men. It is one step forward and two steps backward for the common woman. There are contradictory forces at work. On one hand there is the progressive thinking, which has led to decentralization of powers, which is pro-woman, but on the other there is economic onslaught, which is detriment to woman.

A complex interplay of biological, social, cultural and economic factors put the women and even young girls at greater risk of getting infected with HIV virus. A growing number of women are infected with HIV all over the world. An overwhelming reason for this trend is economic dependence of female over their male counterpart.

In a diverse country like India gender issues and their solutions can never have a set model, what may work for woman in Kerala, may not work for a women in Punjab. It is also a matter of regret and surprising that the local legal culture has also not spared the women from divesting her property right and they are still in continuation even after the independence. So many anti-woman customs not only still prevails in different parts of India but they are protected by the judiciary. Throughout
the course of discussion there is no reported case from Muslim females relating to the unequal share of inheritance. The cases, which are found, mostly relate to the customs and claims were made to follow the Islamic law.

From the foregoing discussion, it is crystal clear that the Islamic law is not discriminatory towards woman. Islam is the leader of feminist movement. Equality is a comparative concept. The equality can be judged by taking into account all the conditions and circumstances of two different social systems, their setups in which the question of inequality arises. It must be recognized that every difference in treatment between individuals under the law will not necessarily results in inequality and as well that identical treatment may frequently result in serious inequality.

Under Islam equality does not mean literal and mathematical equality. Here equality means a judicious treatment with the males and females keeping in view their social, biological and economic responsibilities. This may be appreciated when we compare the Islamic system with other systems of law.

In Islam, there is a peculiar Islamic attitude towards women, which is based on a characteristic appreciation of values and a full cognizance of the nature of the reality. According to Dr. Alexis Carrol, the noted physiologist, "between the two sexes there are irrevocable difference, and it is imperative to take them into account in constructing the civilized world." The Islamic attitude which is based on the appreciation of difference is only partly reflected in the terms of rights that it accords to women in the society. At the very outset it has been asserted in unequivocal terms that the Quranic evaluation of womanhood can be
judged, only by the place assign to woman in the whole scheme of things in the cosmic order as such. First and foremost the Quran emphasizes the 'musawah' means equality. As biologically, psychologically and metaphysically the role of the two sexes are totally different, so their privileges and liabilities are also different.

The principle of double share for male is, no doubt, extremely equitable since the female heirs receive additionally 'maher' and maintenance from the husband. The male member is also liable for maintenance of his wife and family. The female heir has no such responsibility. The creation of property rights generates the rights and duties. Such as those, who receive something, make compensation or restitution. The law of property and obligation are categorized of the same kind. They assign one another. Rights are creature of events. Haji Sulaiman Abdullah in a discussion on woman, family & law, spoke of the need, 'to look at the whole system before deciding whether a particular law is discriminatory or not.' The complexity of interpreting what is discriminatory and the notion perspective, 'looking at the whole system' and the gender assumptions, that drive it, are tied to the question of how abstract goal of equality may be achieved in practice.

The above principle can be easily understood by the following example - a Muslim dies leaving behind a daughter and a son and property of worth Rs. 60,000/-. Son would take 40,000 and the daughter's share would be Rs. 20,000/-. Suppose the daughter was already married and received 10,000 as her 'mehar' from her husband. So the total share of the daughter became Rs. 30,000/-. The son got married later and paid Rs.
10,000/- as a ‘mehar’ to his wife what left to him was 30,000/- only with, other responsibility of maintaining the family.

It is just an instance. If one sees the Islam with a deep insight, he will realize that it is the daughter who is ultimate beneficiary though apparently the discrimination is visible.

The son of Abu Ahuja having expressed his ignorance and doubt of the cause why a female the weakest and most helpless of the two, enjoyed only half the portion of inheritance bestowed upon a male. Imam Jafar Sadiq replied that a female is excused from performance of many duties imposed by law upon a male such as service in the holy wars, maintenance and support of relations and payment of expiatory fines and dowers etc., for this reason her share of inheritance has been justly limited to half the portion of male.

Any attempt to assign a woman artificially a legal status, not congruent with her social custom or law, will disturb the equilibrium between the two spheres. It will create tension and usually will not stand the test of reality. To resort to the Islamic law of inheritance if woman were to be given their due share according to Islamic law, there would be no question of a woman becoming destitute. It is a matter of regret that the majority of Muslim women fail to get their due share of inheritance from their deceased father or husband as stipulated by Islamic law. If they could do so, this would be more than enough to meet any type of contingencies.

The traditional Hindu Law conferred rights of inheritance only on sons because it was considered that they saved the parents from hell. Human society has always been kaleidoscopic to meet the ever-changing needs of the time; the law should also be changing with the gradual growth
of property law. With the lapse of time some property rights were conferred to women, though they were discriminatory as they were only entitled to hold the Stridhan. The journey of women’s property right which started by the Hindu Law of Inheritance Act, 1928, continued till 2005 (the Hindu Succession Amendment Act 2005). By the Act of 1937, significant changes were brought in the law of partition, alienation of property, inheritance and adoption.

The Hindu Succession Act, 1956, has been considered the piecemeal legislation because it gives daughters equal right to the son though only in separate property and self acquired property. During the debate on the Hindu Code Bill the majority of legislators had took a stand against daughter to be a coparcener. Perhaps it was the most shameful moment in the history of parliamentary proceedings. The Act of 1956, too had many drawbacks and created a lot of chaos in the practice. There were plethora of cases in which different courts have different verdicts. Sometimes they leaned towards women, but sometimes the literal interpretation has been given. Section 6 of the Hindu Succession Act, 1956, deals with the devolution of interest of a male Hindu in coparcenary property and recognized the rule of devolution by survivorship among the member of the coparcenary and talked about the notional partition which is the most bewildering provision of the Act. The net result of section 6 was that only male members were entitled to have a share in the coparcenary property, completely excluding daughters. This was a blatant discrimination with daughters caused by the principles of notional partition.

Thus the Act of 1956, though brought considerable changes in the rights of female yet it did not go the whole hog in making daughter,
member of the coparcenary with equal rights of partition and survivorship. Section 14, which is the most controversial section and created a great hardship in its implementation, is still prevailed. No changes has been introduced even by the new amendment of 2005. The words used in section 14 always remain in controversy in regard of its interpretation. The decisions given by the courts are, so divergent that instead of resolving the controversies increase it. Generally the court leaned towards the favouring of women.

Sections 23 and 24 were also very discriminatory because under section 23 only qualified right of partition was given to the female heirs in the dwelling house. She was not entitled to claim partition unless the male members choose to partition even there was only one male member, at this situation there was very little chance to choose partition. Sections 23 & 24 are now omitted clearing the way for the daughter to have share in dwelling house, to demand partition and the widow to retain property even after remarriage. The bar imposed upon widow by the section 24 not to inherit the property of her previous husband on remarriage, has now been removed by the new amendment by omitting section 24. Despite of this amendment there are still two sets of rules governing the intestate succession of male and female separately.

By this amendment some new heirs have also been added and most of them are related though female’s or females themselves. So it is expected that the recent steps, taken by the Parliament to ameliorate the position of women, will restore the glory of Hinduism and will take the country to a high pedestal, globally.
Christian and Parsi laws, which governed Indian Christian and Parsi, are no more a religious law, in their strict sense. Because there is no spiritual sanctity or religious values behind them. The Christian and Parsi's intestate succession is governed by the pre-independence Act of 1925. Inspite of the policy of non-interference in the matters of personal affairs by Britishers, so many statutes had been passed to govern the Indian Christian and Parsis. The British rule in India began on the legislative front with the Indian Succession Act, 1865 and Parsi Succession Act, 1865, which were based upon English Law in letter and spirit.

The Christian intestate succession is governed till now which did the provisions of the Act of 1925 base on the Act, 1865. The Act of 1925, had been passed through a long list of amendments, which started just after one year of the passing of the Act in 1926 (The Indian Succession Amendment Act 1926, (37 of 1926), (40 of 1926), (18 of 1927), (14 of 1928), (18 of 1929), (17 of 1937), (17 of 1939), (35 of 1949), (34 of 1957), (16 of 1962), (51 of 1991) and latest in 2002 (26 of 2002).

In the Act of 1925, there are two different sets of rules to regulate the movable and immovable property of a intestate Christian. The domicile of the propositus is the main factor to decide the law of which country be applied to govern the succession. Under the provision of the Indian Succession Act, 1925, there is no place for the English concept of marital property. There is no distinction between real and personal property. The heir-ship of a Christian intestate be decided by the consanguinity but husband and wife are the exceptions. The Christian law does not discriminate between the agnate and cognatos, half and full blood, posthumous child and the child born in the lifetime of his father. The
remarkable feature of Indian Succession Act, 1925, relating to Christian is that the widower has the same right of inheritance as the widow. The only discrimination is with the mother of a Christian intestate who has no right of inheritance if there is any lineal descendant or even father. It means she is not entitled to inherit the property simultaneously with the father. She is only entitled to inherit the property if there is no lineal descendant and father. On the other hand if there is no lineal descendant, the father will inherit the whole property excluding all other heirs even the mother also. It is a gross discrimination with the Christian mother.

The Parsi law of intestate Succession has passed through many revolutionary changes. The Parsis were much exploited in the British period since their succession was governed by the rules of common law. After a long struggle, the Parsi Succession Act of 1856 was passed. That too was much discriminatory towards women. But by this Act the widow and daughter were made the heirs for the first time. Before it they were entitled only for maintenance. Yet the mother and sister were not included in the list of heirs. Before the amendment of 1939, the son’s share in agricultural land was four times more than daughter and two times more than widow. After amendment the son’s share was made double of the daughter, by this amendment sister and mother were also introduced as heirs. The drastic changes were brought in the law of inheritance of Parsis by the amendment of 1991, which had abolished all sex based discrimination and made the female equal to the male in the field of inheritance. The only discriminatory share is seems to be of the parents which is half of each child but it can not be said as discriminatory because the parents have no responsibilities.
From the foregoing discussion it is obvious that not only the concept of women's property right is different but even the concept of women's property is also different in every legal system. As in Hindu law, it is termed as Stridhana or women's limited estate. In common law it is called the marital property, which is not prevalent in Indian Christian. In Muslims it is just a property whether related to male or female both have equal right to appropriate it. In Hindu and Common law the consequences and rights attached to the property of male and female were not the same.

Succinctly, it is evident that whatever the reason may be, the inheritance rights of females are discriminatory in almost all system. The difference if any is only of the degree or form. Sometime these are justified in the name of religion and sometime to avoid social and economic problem as to restrain from the fragmentation or to escape the chaos in social order. Even the enacted laws also maintained difference or discrimination between male and female heirs. The customary law which are anti women still allowed to prevail, which totally excluded the women from inheritance.

The comparative study has facilitated in understanding the real position of women, with regards to their succession rights and shares, in different legal system. Though the comparative process is adopted throughout the work, with critical analysis of different ideologies in theory and in practice, which helped in evaluating the status of women with regards to economic and social empowerment and the progress made in 20th century. It has also enabled us to see some principles which are recognized in one system but not in other as the doctrine of covertures is recognized in Hindu and Christian law but not in Muslim law. The change
of the status of females from maidenhood to womanhood does not disturb her proprietary right in Islam. By the comparative chart, the real position of woman according to their status is visible even at a glance.

Courts are generally treated as a warning agency, maintainer of legal order and trustee of law. As per record in a federal democracy, the record of Indian Judiciary is also not free from lapses and blemishes. From a number of decisions the revolutionary and surprising attitudes of the court is quite clear. The courts took a liberal and favourable verdict towards the women in the matter of succession. Ambivalence is the most characteristic trait of court’s approach to religious and secular laws. It is also stimulating to note that in some cases the judiciary has held that a woman may be a Karta of Hindu joint family. But it is pity to note that few courts still hesitate to go against the written text. Burgeoning case laws, illuminating many dark spots of existing laws have been taken into account and many burning problems have been highlighted by the courts. However one thing can be said with the air of certainty that the courts in India have played an important role in developing equality oriented jurisprudence, which is obvious by the foregoing discussion of the case laws. Inspite of it Muslim’s females are not benefited.

More than anything else Muslim women’s right is in jeopardy because of the attitudes and practices developed over the years through the customary based laws. Unfortunately the issue got involved in communal politics to such an extent that even public discourse on the subject is suspicious and inhibited. In such a context incremental reform, through judicial process though slow and uncertain, is still welcomed.
However, it is gratifying that the process towards the realization of an egalitarian pattern of man and woman relationship has begun. Hopes have been raised that there will be no discrimination in social, economic and political field in the foreseeable future. The new amendments of 2005 in the law of succession are an encouraging step to equalize and emancipate the Hindu females. It is a glaring fact and hard truth that the Islamic law as practiced today has taken a course contrary to the letter and spirit of Shariah therefore causing hardship and miseries to the Muslim woman. The sooner it is set right the better will flow to the society. Now the ball is in the court of judiciary and executive to implement the provision of new Hindu Succession (amendment) Act 2005 and Islamic law in its true spirit to make a gender-just society.

Suggestions

After discussing the available relevant materials on the subject, an earnest and modest attempt has been made to forward some suggestions though not exhaustive but may go a long way to ameliorate the cause of property rights of women.

- In a literary backward country like India, the people (particularly women) are not awarded about their rights and duties. So far as the property rights are concerned the women do even not know their right of inheritance, provided under the Hindu Succession Act, 1956. Moreover the drastic changes brought about by the amending Act of 2005, are not known to females. For this reason there is an immediate and urgent need to educate the woman about their new rights conferred by the above Act. It is hereby submitted that a special
programme should, to spread legal awareness among the woman, be run by the state machinery. Various women's organizations, NGOs and law students should take initiative to educate the women particularly those belonging to weaker or submerged groups living in slums and villages. The general legal literacy is a need of time for the females of all communities.

- Some grass root steps should have to be taken to weed out the patriarchal biases. Participation of both men and women is equally important for the upliftment of woman. Today the need is to establish equilibrium between men and women, as regards to social, legal and traditional status in the existing society. It is a genetic reality that any attempt to assign women a low and artificial legal status wills not stand at the test of justice and fair play.

- The law does not exist in vacuum and mere promulgation of legislations cannot provide the proper solution of the social problem unless it is effectively enforced. It is, therefore suggested that there should be a number of law enforcing agencies and family crisis wings within the family welfare centers throughout the country. These institutions should be looked after either by the State Government or by the Central Government.

- The feminist movement could be more effective and result oriented if men also came forward and joined hands with them. To make the society a better place to live, the family
problems should be solved within the four walls of home. For that there is a change in the attitudes of men towards the women at family, society, and state and at global level. It is very essential towards achieving the goal by changing the stereotype ideas of male domination. The need is to change the infrastructure of the society.

- The proceedings of the courts are required to be expeditious and time bound as the best laws would be rendered meaningless, particularly to issues relating to women, by an ineffective justice delivery system. Sometimes the delay in-justice even frustrated the object of seeking of the justice.

- The legislative steps is recently taken are appreciated and welcomed by the females and the right thinking peoples of men folk. But in this regard the women should act sensibly to reach their goal of attaining equality without disturbing the family bond and harmony. The transition of powers should be smooth and without any heart burning.

- With all due respect to judiciary, it is submitted that our lawyers and judges are not very much conversant with the provisions of Islamic law. It is therefore suggested that the government should provide the statutory status to the Qazi Courts and empower them to handle minor cases of property disputes, succession and family strife’s of the community etc. This will not only lessen the burden on courts but will also save the valuable time of the court and money of the litigants. These courts should not be considered as an attempt to create
a parallel judicial system, but just an agency to help our already overburdened courts. Creation of such courts are not new in this country, these courts are already working. In Madya Pradesh, almost every district has a Qazi Court. Such courts are also working in many cities of Maharashtra. Darul Uloom and Nadwatul-Ulema are the glaring examples of the success of such courts.

- In cases of conflict between statutory law and personal law, reference should be made to a jury of experts in personal law as well as unbiased judges who would ensure speedy justice.

- There must be a comprehensive codification of the entire Islamic law it is inevitable. In this the representation of the Ulema of all schools should be taken. By this way there would be a uniform law for all Muslims throughout the India. Any delay in its exercise will be detrimental for the cause of Muslim women in the country because the applicability is not uniform what is applied to the woman of Kerala, is not applied to the woman in Jammu & Kashmir.

- In case of agricultural land, the Uttar Pradesh Zamindari Abolition & Land Reform Act, 1950, has excluded all females except widow, from having any share in agricultural land. This is a blatant discrimination with the females. No empowerment of women could be possible unless they are made economically sound. Therefore in this era of women empowerment it is ripe time that a suitable amendment should be made in the land laws to entitle the females to have a share
in agricultural land also. It should be noted that some States like Andhra Pradesh, Tamil Nadu and Kerala have already taken a positive steps in this direction. It is therefore suggested that certain amendments should be made in the Shariat Application Act, 1937 to extend its application to the agricultural land as in some States these have been taken relating to Hindu females.

- Even after the attaining of 58 years of independence certain anti women customary laws still prevail in certain part of the Indian sub continent as in Jammu & Kashmir, the customs like 'Khana-e-damadi' or 'pisar-e-parvarda' etc. In this direction the Government must take some grass root steps to eradicate these customs and ensure the implementation of the pro women Islamic law of inheritance for Muslims females.

- To avoid the fragmentation the provision may be attached that if the females want to sale the property or their share in the agricultural land the family members should be given preference to buy it, provided that they give the best price.

- The provisions of inheritance under different system of religions and statutory laws should be strictly enforced. In case of non-compliance of the decisions delivered by the court some sanctions must be provided in the law. In this patriarchal and male dominated society it is impossible for female to get justice without the provisions of sanctions/punishments particularly in the field of succession.
• There must be drastic changes in the infrastructure in all the three components of Government judiciary, executive and legislature. Females should be given lions share in all the above mention organs of the Government. Hundred of Kiran Bedi, who knows the agony of women-hood, should be employed to treat the cases passionately.

• The provisions of Indian Succession Act, 1925 has done great injustice with the peoples of different religion specially with in the field of inheritance, for instance, the parties who have contracted their marriage under the Special Marriage Act, 1954, will be subjected by the Indian Succession Act, 1925, in the matter of succession even if both the parties are of same religion and it will extent to their future generation also. But after the Hindu Succession Act, 1956, this provision is not applicable in case of Hindus where both the parties are of same religion. The Hindu Succession Act, 1956, will govern them. The above provision is highly discriminatory, it is, therefore, submitted that a uniform law applicable to all irrespective of their religion, should be enacted and applied.

• Discrimination against women is so pervasive that it sometimes surface on a bare perusal of the law, made by the legislature itself, as in the case of a Christian mother under the provision of section 42 of Indian Succession Act, 1925. So necessary amendment should be made in the above said Act enabling the Christian mother to inherit the property simultaneously with the father. It will be more appropriate and
more humanitarian to entitle the parents to inherit the property even in the presence of lineal descendants, to save them from any social distress.

We can conclude the discussion with the words of K.T. Bhashayam Ayenger, "We must give back their rights and privileges in law of which we have robbed them. The injustices perpetrated on them in the name of law, should be remedied and as we honoured them in life, so must we make equal them to us in law then the law shall be the real reflections of life." Desired result can be achieved only when men and women both join hand for the amelioration of economic independence of women. As the fight for gender equality is not a fight against men, it is a fight against traditions that have chained them, a fight against attitudes that are ingrained in the society, a fight against system and a fight against proverbial Lakshman Rekha.'

Nothing in the world is perfect and no word is the last word in any branch of knowledge least of all in the study and practice of law.