ABSTRACT

Women, the designer of civilization, the pivot of family, the protector of home, the spirit, strength and soul of man, shaped the destiny of human race. Many times, she has proved that she is not frail, fragile and delicate. Though physically she is weak yet spiritually she is strong. It is she who raised Prophets and Pharorah but unfortunately this segment of society is never treated as human being in the world of males, sometime she is considered as ‘Devi’ and worshiped by male as Lakshmi Durga and Kali, sometime treated as ‘Dasí’. From the dawn of civilization, she is the victim of vast discrimination and male chauvinism.

With the heralding of the new millenium, the problem of woman’s dignity and gender inequality stands as one of the most important global challenge. The existence and perpetuation of gender injustice is a blot and slur on modern welfare state. It is a curse upon society, a disgrace for the entire human race, a malady that may wreck the back bone of man kind. The future of the human world very much depends upon the development of the fair sex. The rate of a nation inextricably interwove with the welfare of its women folk who constitute half of the world’s population.

The recent trend, in the global system, is to evaluate the development of any country, not in terms of their military or economic strength or splendour of their capital cities and public buildings but also in terms of human development or the well being of its people. Against this backdrop the persistence of gender discrimination has been one of the
main limiting factor in the way of human development in all, particularly in the third world countries. The issue of the woman’s property right is a major human right issue and at the same time it is highly emotive one.

According to one report of United Nations Organization, women contribute 2/3 of total working hours, still they earn only 1/10 of world’s income and possess only 1% of immovable property in their name. In view of the magnitude of the problem, an International programme for the elimination of gender inequality was launched all over the world.

The movement, from the First United Nations World Conference on women held in Mexico in 1975, to the Fourth World Conference on women held in Beijing in 1995, has travelled to eliminate gender discrimination and to accord the rightful place to women throughout the world. A glut of International Conventions and Declaration in support of women’s property rights have been passed and specialized agencies are busy in promoting equality of rights of men and women.

Despite an array of woman welfare legislation and judicial verdicts the problem of practical implementation of these statutes and women’s emancipation is still a distant dream and spinning its wheels. They are deprived of getting shares in the property. In fact the practical significance of these enactments are meaningless. The concept of non giving the family property to females, as it will go in the hand of another family, is so deeply rooted in society that it is hard nut to crack even to imagine that women will get their due share peacefully and honestly. In the aforesaid harsh facts the significance of the problem has assumed a great importance.

The law of inheritance is an important subject to be considered not only because that it ensures the future security of woman both married and
spinster but also because it may lead to social tragedies in accordance to system adopted. For the emancipation of women the economic independence is of a paramount importance. Though the gender inequality exists in every walk of life yet the most harmful one is in the field of property rights from the very beginning of the family system. Till the later half of the 18th century the females were not considered to be able to have any economic rights. They were wholly dependent upon the sweat will of their husband, father, brother and even on their own sons. On the other hand because of these financial security, men thought that they could subject them to abject humiliation. Property always plays an important role in the life of an individual, community and country. The practical significance of the property lies in the fact that it enables us at least the necessities and amenities of the routine life if not the means of comfort. Sometime to earn their bread they are bound to do some heinous acts, which dirt the whole society. The property rights will give succour to the sufferings and to fight the battle of their lives.

The women’s liberation movement picked up momentum in the beginning of the second half of the 20th century to raise the status of women and to give them their just rights. The social movement for women upliftment and women’s awakening highlighted the pathetic conditions of this segment of society and pointed out that women folk have been living in distress and subject to exploitation under male domination.

The property rights of women has passed through a long struggle and revolutionary changes. Perhaps Islam is the pioneer of introducing the females as heir and considered them to be able to hold the property in the Austinian sense, whereas the rest of the world did not consider woman as
able to hold the property or have economic rights. They were considered as a ceremonial devices. Persons having superficial knowledge in the law of property (both testamentary and non testamentary) alleged time and again that the property rights available to Muslim women are discriminatory so far as the women of other religions are concerned.

The above arduous facts prompted me to undertake the study on the topic titled as “Women's Property Rights Under Personal Laws in India: A Socio-Legal Study.” The main aim for the present study is to evaluate critically the statutory and customary laws relating to women’s property under different religio-legal system and to bring about certain controversial problems to surface. Another aspect of the study is whether the shares allotted to Muslim females, under the provision of Holy Quran in different capacities are justified, keeping in view the liabilities discharged by them in family.

With the heralding of new millennium the problem of women’s property right stands as one of the most pompous challenge before the world. When the woman is desolated, despaired, deserted and deserted the first question which comes in the mind of destitute female is as to what option left for her? There are luminous literature available on the offences against women, the law relating to marriage, dowry, divorce and other matrimonial disputes but very little attention is given towards the property rights of woman.

Gender inequality exists in different forms but the most harmful one is in the field of property rights. In ancient time the women were not having any property right in any part of the world except in Islam. With the passage of time the women’s property rights were recognized by every
legal system though discriminatory. But the most shameful thing is that instead of the plethora of International conventions which contains yardsticks of gender equality, the misogynic malignancy remained dormant because of the lack of the non enforcing agencies.

It is a stigma on the independent India that the anti-woman customs and usages, which flourished in the British period, continued till today and even got the judicial recognition in many cases. Despite of the passing of various revolutionary enactments there is very little proof that a woman actually inherits. All the Acts remain the paper tiger with no teeth. The piecemeal legislation of 1956 is also better known for its blatant violation rather than its faithful compliance. Now another legislative showpiece of 2005 has come into existence which apparently abolishes all the discrimination faced by Hindu female in the field of property rights.

The only achievement in the field of woman’s property right is that the females now upto some extent, are conscious about their rights. The most remarkable one is that the old concept of women’s property prevailed in the form of matrimonial property or Stridhana or Women’s limited estate are abolished and women have been conferred property rights in the Austinian sense as in Islam from the very beginning.

The double share of male is considered as the most discriminatory provision of Islamic law of inheritance which discriminates only on the basis of sex. 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. Under Islam equality means a judicious treatment with the male and female keeping in view their social, biological and economical factors, which according to a noted physiologist Dr. Alexis,
are imperative to take, the difference between the two sexes, into account in constructing the civilized world. Rights are the creatures of events. Before deciding whether a particular system or law is discriminatory or not it is obligatory to look at the whole system.

The son of Abu Ahuja had doubted about the female's half share. Imam Jafar Sadiq cleared the air by saying that a female was exempted from the 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., that was the reason that her share of inheritance had been justly limited to half the portion of male. But at present it is really a matter of regret that because of the prevailing of the anti-women and anti Islamic customs and usages, sometimes the females are totally excluded from the inheritance.

The long journey of the judicial decisions of the Apex court and different High Courts are evident of this discriminatory fact. In many cases the judicial protection to these discriminatory customs is really a blot and stain on the concept of the welfare state governed by the rule of law. These are discussed at full length in the present work and corrective measures have also been submitted at proper place.

An attempt has also been made to domestify the law of inheritance by the comparative charts to ascertain the share of females in different capacities at a glance in different religo-legal systems.

To establish a gender just society and to ensure the dignity of human being envisaged in the contemporary world some qualitative changes are necessary in the prevailing infrastructure of the society. A humble attempt is made by the researcher to give some suggestions to
overcome the problems and to resolve the issue of gender discrimination particularly in the field of inheritance. These are as follows:-

- To establish an equilibrium between men and women as regards to social, legal and traditional status in the existing society the participation of both sexes is equally important. It is a genetic reality that any attempt to accord women a low and artificial legal status will not stand at the test of justice and fair play. So some grass root steps should be taken to weed out the patriarchal biases.

- The general legal literacy is a need of the time for the females of all communities especially the females of tribal and rural areas. In a literary backward country like India the people particularly women are not aware of their rights and duties. So far as the property rights are concerned the females are not conversant of their shares in inheritance. The drastic changes brought by the latest legislative steps of 2005 in the Act of 1956, are not known by the Hindu females. To make aware of their rights brought about by the Amendment Act of 2005, a nationwide special programme to spread legal awareness, be run by the State machinery. Various women’s Organizations, NGO’s and law students should come forward to take initiative to educate the women particularly those belonging to weaker or submerged group living in slums and villages.

- The legislative steps taken up recently, are appreciated and warmly welcomed by the women folk and the right thinking people of the society. 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 power should be smooth and without any heart burning.

- The feminist movement could be more effective and result oriented if men also came forward and join hands with them because the fight is not against the men but for human worth and dignity. To avoid chaos and family fortune to be wasted the family problems should be solved within the four walls of home. For this there be a change in the stereotype attitudes of men towards the women at family, at society, at state and at global level. The men folk must realize the necessity of property rights of women, which helped them in distress. They should themselves impart their due shares honestly to make the society a better place to live. It is very obvious towards achieving the goal by changing the conventional ideas of male domination. The need is to change the infrastructure of the society.

- 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 centres throughout the country. These institutions should be looked after either by State Government or by Central Government.
There must be drastic changes in the composition of the three components of government judiciary, executive and legislatives. Loins representation should be given to the fair segment of the society in these organs. Hundred of Kiran Bedi's, who know the agony of womenhood should be employed to treat the cases passionately.

The proceedings of the courts are needed to be expeditious and time bound. As the best laws can be rendered meaningless, particularly the issues relating to women, by an ineffective justice delivery system. As inspite of the glut of pro-woman enactments, we are unable to eradicate the gender discrimination and to establish an equality between the two sexes of the society till date. Sometimes the delay in justice even frustrates the object of seeking the justice.

The provision of inheritance under different system of religions and statutory laws should be strictly enforced. In case of the non compliance of the decisions delivered by the courts, 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 or punishment particularly in the field of succession.

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 agriculture land. This is a flagrant 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 a share in agricultural land. It should be noted that some States like Andhra Pradesh, Tamil Naidu and Kerala have already taken a positive step 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 steps have been taken relating to Hindu 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.

- 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 Muslim females.

- There must be a comprehensive codification of the entire Islamic law, it is inevitable. In this process the representation of the Ulemas of all schools should be taken. In this way there would be a uniform law for all Muslims throughout 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 cases of conflict between statutory law and personal law, reference should be made to a jury of experts in personal laws as well as unbiased judges who would ensure speedy justice.

- With all due respect to judiciary, it is submitted that our lawyers and judges are not very much conversant with the provision 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 strifes of the community etc. This will not only lessen the burden on courts but will also save the valuable time 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.

- Discrimination against women is so pervasive that it sometimes surface on a bare persual 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.

- The provisions of Indian Succession Act, 1925 has done great injustice with the peoples of different religion especially with in the field of inheritance, for instance, the parties who have contracted their marriage under the provision of the Special Marriage Act, 1954, will be subjected to the Indian Succession Act, 1925, in the matter of succession even if both the parties are of same religion and it will extend 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 (Hindu). They will be governed by the Hindu Succession Act, 1956. The above provision is highly discriminatory. It is, therefore, submitted that a uniform law be applicable to all irrespective of their religion.