Chapter - 3

Property Rights of Hindu Women Prior To The Enactment of the Hindu Succession Act, 1956
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ACT, 1956

GENERAL

Women enjoy a unique status in every human society and in
different countries of the globe. Inspite of their contribution in all
spheres of life, they also suffer a lot in silence and form a class which
is in a stultifying position because of several behaviours and
impediments. India, being a country of paradoxes is no exception. The
women, an epitome of *Shakti*, once given an exalted status, are in
need of legal, social, political and economic empowerment. However,
empowerment and equality are based on the gender sensitivity of
society towards their problems. The intensification of women's issues
and rights movement all over the world is reflected in various
Conventions passed by the United Nations.¹ These international
protections have helped in the articulation of feminist ideology.

With respect to property rights of a Hindu woman, the dictates
of ancient texts were multifarious; some recommending the granting of
a share to her and some putting restrictions on her rights to even
acquire it herself or hold it as an absolute owner. Whatever might
have been the recommendations of the Dharmashastra, there is no
dispute about the fact that the interpretations and selective pickings
of its provisions and the influence of customs placed severe
impediments on her right to acquire property.² Since time
immemorial, the framing of all property laws have been exclusively for
the benefit of man and woman has been treated as subservient, and

¹ Declaration of Human Rights, 1945, which followed by the United Nations Declaration, 1948,
Rome Convention for Protection of Human Rights and Fundamental Freedoms, 1950 and it's
protocol in 1952, European Social Charter, 1961, American Convention on Human Rights,
on Elimination of all Forms of Discrimination against Women, 1979, African Charter on

dependent on male support. Prior to the Hindu Succession Act, 1956, besides divine ordinances, customary laws, that varied from region to region, governed the Hindus in family matters.

In Indian culture, since the very early periods i.e. prior to Manu, the Indian society had a flexible social structure. The concept of *ardhangini* was propagated where men and women had equal rights, neither one being superior to the other. But after that barbarous practices developed and women were relegated to a subordinate status. The subordinate position of woman was rooted in the social and economic structure of the society of that period.3

The communications and social interactions in the past were difficult because of the vastness of the country and it led to diversity in the law. Consequently in matters of succession also, there were different Schools, like *Dayabhaga* in Bengal and the adjoining areas; *Mayukha* in Bombay, *Konkan* and Gujarat and *Marumakkattayam* or *Nambudri* in Kerala and *Mitakshara* in other parts of India with slight variations and customary law in Punjab. Moreover, separate rules applied to joint family property and to one's separate or absolute property. The multiplicity of succession laws in India, diverse in their nature, owing to their varied origin made the property laws even more complex. But the social reform movement during the pre-independence period raised the issue of gender discrimination and a number of ameliorative steps were initiated. The principal reform that was called for and one which became a pressing necessity in view of changed social and economic conditions, was that in succession. There should be equitable distribution between male and female heirs and the Hindu women's limited estate should be enlarged into full ownership. The only property over which she had an absolute ownership was the *Stridhana* which means woman's property.

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3 Kulwant Gill (Dr.), *Hindu Women's Right to Property in India* 9 (1986).
GRADUAL CHANGES INTRODUCED BY THE LEGISLATURE

After the Muslim period, the Britishers brought with them new ideology, liberal ideas and democratic traditions which gave an impetus to the movement for the upliftment of the women who had remained downtrodden for centuries. Raja Ram Mohan Roy, who was an indefatigable pioneer of social and religious reforms in India, saw the richness of English Literature, which was full not only of the scientific ideas and inventions necessary for the economic growth of the country, but also of liberalism and democratic traditions. Raja Ram Mohan Roy started a campaign for the removal of injustice towards women, which was carried forward by Ishwarchandra Vidyasagar and other social reformers. During these movements the reformers attacked at the unjust practices of oppressive social customs, viz; commission of sati, the ill treatment of widows, ban on re-marriage of a widow, polygamy, child marriage, denial of property rights, education to women etc. The social reformers felt that these social evils should be eradicated by arousing conscious of people to fight against the injustice perpetrated to women.

British Period

The Britishers remained the rulers of India in the eighteenth, the nineteenth and the first half of the twentieth centuries. During the British rule, a number of changes took place in the economic and social structures of our society. Several factors contributed towards the upliftment of the women. First and foremost was the direct influence of the British people noted for their chivalry towards women, the general awakening of Asians in the twentieth century was another important factor, while the political struggle for Indian independence gave a tremendous impetus to the feminist movement in India.

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4 These Movements were Social Reform Movement and the Nationalist Movement.
5 The agitation started by Raja Ram Mohan Roy culminated in legislation, passed later by the efforts of Ishwarchandra Vidyasagar in the form of the Hindu Widow's Remarriage Act, 1856.
Initially, the Charter of Charles II in 1661\(^6\) authorized the East India Company to exercise judicial powers in India. The Charter of George I in 1726 authorized the establishment of Mayor’s Courts\(^7\) in Calcutta, Bombay and Madras. This Charter was silent regarding jurisdiction over native inhabitants. The Warren Hastings Plan\(^8\) provided for the establishment of civil and criminal courts in each district.\(^9\) This plan granted the jurisdiction to the company over the natives.\(^10\) The plan explicitly protected the right of Hindus and Muslims to apply their own personal laws in civil matters concerning inheritance, marriage, caste etc.\(^11\) In 1772, Hastings hired a group of eleven pundits for the purpose of creating a digest of Hindu law, which brought a heavy Anglo-Brahminical bias into the law. This was translated into Persian\(^12\) and then later into English and was published in 1776 under the title, *A Code of Gentoo Laws or Ordinations of Pundits*. The subsequent work of William Jones, i.e. *Third Anniversary Discourse to the Asiatic Society on the history and culture of the Hindus*,\(^13\) has been compared with the Justanian *Corpus Juris*.\(^14\) Hastings who declared in his plans\(^15\) for the Administraton of justice that, "in all suits regarding inheritance, marriage, caste and

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\(^6\) This was the first Charter in a series of Charters. The Other Acts relevant here were Child Marriage Restraint Act, 1929, Settlement of Property Act, 1916, etc.

\(^7\) Courts of the King of England.

\(^8\) Plan of 1772.

\(^9\) Known as Mofussil Courts.


\(^12\) Known as *Vivadarnava vasetu*.

\(^13\) Delivered on 2 February 1786 and published in 1788.

\(^14\) William Jones set out to give his subjects their law in a similar fashion as Justanian guaranteed his Roman and Greek subjects their laws in the form of 12 Tables i.e. Table I Procedure for courts and trials; Table II Trials, continued; Table III Debt; Table IV Right of fathers (paterfamilias) over the family; Table V Legal guardianship and inheritance laws; Table VI Acquisition and possession; Table VII Land rights; Table VIII Torts and delicts (Laws of injury); Table IX Public law; Table X Sacred law; Table XI Supplement I; Table XII Supplement II.

\(^15\) Article XXIII of the plan.
other religious usages or institutions, the laws of the Koran with respect to the Mohammedans and those of the Shastras with respects to the ‘Gentoos’\textsuperscript{16} shall invariably be adhered to.”\textsuperscript{17} In 1774, the Mayor’s Court of Calcutta was converted into a Supreme Court and in 1781, it was granted express jurisdiction over natives. It was laid down that in matters of inheritance, succession, land rent, goods and all matters of contract, the respective customary laws should be applied. In case the laws of the parties differed, the laws applicable to the defendant were to be applied. The practice of saving the personal laws of the natives which started at this juncture continued through all subsequent British Regulations. But the Charters were not clear whether the native laws of Hindus and Muslims referred to their religious laws or to the customary usages or to both.\textsuperscript{18}

Despite the initial policy of non-interference in ‘personal’ matters, as the British rule gained acceptance and stability, there was a gradual process of tampering with the established local customs through various means. The British interpretations of the ancient texts became binding and made the law certain, rigid and uniform. Through their interventions the Hindu society could rid itself of its ‘barbarism’ and enter an era of ‘civilization’. The entry of Hindu social reformers into the campaign against Sati at the advent of nineteenth century strengthened the process of interventions not only by judicial decisions but also by legislative reforms. The much-acclaimed \textit{Sati Regulation Act of 1829} was followed by other legislations such as the \textit{Hindu Widow’s Remarriage Act 1856}, the \textit{Age of Consent Act}, 1860, and the \textit{Prohibition of Female Infanticide Act}, 1872. These legislations, focusing on the ‘barbaric’ customs of the natives, convey an

\textsuperscript{16} ‘Gentoos’ was the Portuguese term for Hindus. The term has its origin in the Biblical term ‘Gentiles’ meaning heathens or non-believers.

\textsuperscript{17} Section 27 of the Administration of Justice Regulation of 11 April 1772.

\textsuperscript{18} \textit{Supra} note 10 at 43.
impression that the exceptions to the rule of non-interference in the realm of ‘personal’ laws were for the benefit of women.\(^{19}\)

The dent in the sacred zone of family laws was made in 1832 with Bengal Regulations and then with the Caste Disabilities Removal Act, 1850, which was based on the former.

**The Caste Disabilities Removal Act, 1850\(^{20}\)**

This Act was passed to secure the rights of a convert or a person who was excommunicated from the community. The general rule, prior to the passing of this Act, was that only a Hindu can inherit from a Hindu. Under the strict rules of inheritance which were applicable under the Hindu law, a difference of religion as between the intestate and his heirs operated as a disqualification for the heirs to succeed to his property. Thus a Hindu could by reason of his conversion or his excommunication forfeit his right of inheritance in the property of his relatives.\(^{21}\) This Act was passed in order primarily to protect the rights of a convert or a person who was excommunicated by removing disabilities that were hitherto attached to them. Now, despite a conversion or expulsion neither the difference of religion with that of his former relatives nor the fact of his excommunication or expulsion can have any adverse effect on his property rights. He can continue to be the member of his former family despite his conversion and can inherit the property of his deceased relatives. However, though the convert’s rights were protected and he could inherit from his Hindu relatives, his

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20 Act 21 of 1850.
21 *Subbaraya v. Ramaswami* (1900) 23 Mad 171. See also *Khunni Lal v. Gobinda Krishna* (1911) 38 IA 87; *Ram Pergash v. Dalu Bibi* (1924) 3 Pat 152. For deprivation of castes see *Vedammal v. Vedanayaga* (1908) 31 Mad 100; *Bhujjanlal v. Gaya Pershad* (1870) 2 NWP 446; *Nalinaksha v. Rajanikant* (1931) 58 Cal 1392.
descendants and other Hindu relatives could not enjoy the same protection.22

The Act interfered with the classical concept of Hindu joint family by permitting a non-Hindu to be its member. The Hindu joint family could have only Hindus as its members and this incongruent situation was reconciled by postulating that the conversion would mean an automatic partition of the convert from the joint family and he would be entitled to take his share as it stood on the day of his conversion.23

**The Hindu Widow's Remarriage Act, 1856**24

The Hindu Widow's Remarriage Act, 185625 was made by the Government of East India Company to render remarriage of Hindu widows valid and consequently her issue from this second or subsequent marriage was legitimate. It was an Act to remove disability from which the Hindu widows were suffering and allowed them to remarry. They were given a right which they could not avail in the then existing society. This Act applied to all Hindu widows, irrespective of caste regulations concerning remarriage. This Act was made to remove all legal obstacles to the re-marriage of Hindu widows and to promote good morals to the public welfare.26

Section 2 of this Act has the effect of divesting her of the estate inherited by her from her deceased husband on her remarriage. The rights and interests in certain properties which a widow gets from her husband as limited estate shall cease upon her remarriage and shall

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22 Section 26 of the Hindu Succession Act, 1956.
23 Supra note 2 at 257.
24 Act 15 of 1856.
25 The Act has now been repealed by the Hindu Widow's Remarriage (Repeal) Act, 1983 (Act 24 of 1983).
devolve as if she had died. The question whether by reason of the provisions of Section-2, a widow, who has acquired absolute interest by subsequent remarriage arose for consideration before various High Courts, and unanimous view expressed is that if the widow remarried before the Hindu Succession Act, 1956, came into force, she forfeited all her rights in the family property because in that case she did not fulfill the conditions laid down in sub-section (1) of Section-14 as her possession of the property was not in her own right as a Hindu widow. But if she remarried after the coming into force of the Hindu Succession Act, 1956 then Section 2 of this Act, did not apply, because of its inconsistency with the provisions as provided in Section 4(1) (b) of the Act. The only condition which has to be fulfilled for the acquisition of absolute right by the widow over the property of her husband is that she must be in possession of the said property at the time of the commencement of the Act.

The Hindu Succession Act, 1956 has brought about radical changes in the law of succession and has superseded all rules of succession laid down by the Hindu law or contained in any previous enactment or elsewhere which are inconsistent with any of its provisions as provided under Section-4 of the Act. The Hindu Widow’s Remarriage Act, 1856 provides that a widow will be divested of her property which she has inherited from her husband on her remarriage. The above said provision was necessitated because of the fact that she was only a limited owner of the inherited property and it was only given to her for the purposes of maintenance. The obligation of the husband’s family or property to maintain her comes to an end.

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27 Section 2 of the Hindu Widow’s Remarriage Act, 1856.
29 17th June 1956.
30 Section 4 : Overriding Effect of the Act.
on her remarriage, as she is to be maintained by the second husband thereafter. It is very important to point out that since under subsection (1) of the Section 14 of the Act of 1956\(^{31}\) the Hindu female becomes an absolute owner of the property inherited by her from her deceased husband, there is now no question of divesting her of the property on her remarriage.\(^{32}\) The Supreme Court has also very categorically said in *Punithavalli Ammal v. Ramalingam*\(^{33}\) that the full ownership conferred on a Hindu female under sub-section (1) of Section 14 of the Hindu Succession Act, 1956, is not defensible by any rule of Hindu law.

**The Native\(^{34}\) Convert's Marriage Dissolution Act, 1866\(^{35}\)**

The Act provides relief to the person who changes his or her religion for Christianity against his or her spouse who has deserted or repudiated him or her for the space of six continuous months, to sue him or her for conjugal society. This Act provides that the dissolution of marriage under this Act shall not affect the right or interest of the parties under their personal law by way of maintenance, inheritance or otherwise.\(^ {36}\)

**The Hindu Wills Act, 1870\(^{37}\)**

During the colonial times, Hindus did not have any law relating to Wills. Under the Mitakshara law, a coparcener was prohibited from making a will of his undivided interest in the coparcenary property. However, with respect to his separate property, he had absolute power of disposal so long as he was alive but he was not empowered to control the distribution of the property after his death by making a

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\(^{31}\) Section 14 converted the Limited Ownership into absolute ownership.


\(^{33}\) AIR 1970 SC 1730.

\(^{34}\) The Word ‘Native’ in the title of Act has been omitted by the Amendment of 1950.

\(^{35}\) Act 21 of 1866.

\(^{36}\) Section 27 of the Convert’s Marriage Dissolution Act, 1866.

\(^{37}\) Act 6 of 1870.
Will. The Hindu Wills Act passed in 1870, to enable Hindus to make a testamentary disposition of their property. The Act was later on, consolidated in the form of Indian Succession Act, 1925.\textsuperscript{38}

The movement to strengthen the position of women in society began from the second half of the nineteenth century. The earliest attempts may be traced back to 1865 with Act X of that year\textsuperscript{39} as the first step towards conferring economic security upon Indian women. \textit{The Indian Succession Act}, 1865\textsuperscript{40} laid down that no person shall by marriage acquire any interest in the property of the person whom he or she marries and 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.\textsuperscript{41} The earliest attempt to ameliorate the proprietary position of women by a piece of legislation was very limited in application. More for reaching was the Married Women’s Property Bill of 1874.\textsuperscript{42}

\textbf{The Married Women’s Right to Property Act, 1874}\textsuperscript{43}

On 24th February 1874, the Council of the Governor-General of India considers the above said Bill.\textsuperscript{44} The Bill was passed as Act III of 1874, the first law, which was extending the scope of \textit{Stridhana}.\textsuperscript{45} The objective of this Act was that of protection the separate property of the married woman.\textsuperscript{46} The Act declared that all women to whose marriages it applies, are absolute owners of all property vested in or acquired by them. The husbands of married women do not by their marriages acquire any right in such property.\textsuperscript{47} This Act does not

\begin{footnotesize}
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\item \textsuperscript{38} Supra note 2 at 46.
\item \textsuperscript{39} The Indian Succession Act, 1865.
\item \textsuperscript{40} Act X of 1865.
\item \textsuperscript{41} Section 4 of the Indian Succession Act, 1865.
\item \textsuperscript{42} The Married Women’s Property Acts in England inspired this Bill.
\item \textsuperscript{43} Act III of 1874.
\item \textsuperscript{44} Proceedings of the Council of the Governor-General of India 47-48 (1874).
\item \textsuperscript{45} Ibid
\item \textsuperscript{46} Monmayee Basu, “Hindu Women and Marriage Law from Sacrament to Contract”, \textit{The Cambridge Law Journal} 228 (2002).
\item \textsuperscript{47} Section 3 of the Married Women’s Property Act, 1874.
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protect such husbands from liabilities on account of the debts of their wives contracted before marriage and does not expressly provide for the enforcement of claims by or against such wives.\textsuperscript{48}

The Act provides that the wages and earnings of any married woman, any property acquired by her through her art and skill, and all her savings and investments shall be her separate property and a married woman can file a suit in her own name in respect of her own property. But this Act did not create stir in Hindu society because, until 1923, the Act applied only to Indian Christian women. Any married women belonging to Hindu, Mohammedan, Sikh, Buddhism and Jain Communities remained outside the purview of this Act. \textsuperscript{49}

A radical change was made in the year of 1923 by which the Married Women’s Property Act of 1874 was amended by Act III of 1923, so as to bring Hindu and others women within its jurisdiction. On 15th February, 1923, on the motion of Kamath Committee’s report on the Bill to further amend this Act, was taken into consideration. Kamath’s Bill intended to provide a policy of insurance which would be for the benefit of the wife and children of the insurer. The Bill was finally passed into law in March, 1923.\textsuperscript{50} The year 1923 was considered as a landmark because this was the year that the Hindu women’s independent right to property was recognised for the first time although to a limited extent. No doubt, Section 4 of the Hindu Widow’s Remarriage Act, 1856 entitled the childless widow to a share of her husband’s property, this right was limited in scope.\textsuperscript{51} So the attempt made in 1923 may be regarded as the first move to ensure that women’s economic rights were honoured. This Act was further amended in 1927. Its aim was to safeguard the interests of husband.

\textsuperscript{49} Section 1 of the Married Women’s Property Act, 1874.
\textsuperscript{50} N.N. Mitra (ed.), \textit{The Indian Annual Survey Register} Vol. II 295-296 (1923).
\textsuperscript{51} \textit{Ibid} at 69, 77.
James Crerar, the Home Minister, moved the Bill, a part of which was meant to limit the liability of a husband when his wife had obtained a probate or letter of administration and was a trustee, executrix or administratrix either before or after marriage. The motion was adopted apart from safeguarding the interest of wives and husbands by the Acts of 1923 and 1927, respectively, another Act was passed in 1929, which aimed at giving preference to some nearer degrees of female heirs over certain remoter degrees of male heirs. The seeds of this Act were sown in 1923 when, on 15 February of that year, besides Kamath's Committee, T.V. Seshagiri Ayyar, also moved a Bill in the Legislative Assembly to change the order of inheritance in the Hindu family so as to give priority to certain female members.

**The Transfer of Property Act, 1882**

The Transfer of Property Act, 1882 is a legislation which regulates the transfer of property in India. It contains specific provisions regarding what constitutes transfer and the conditions attached to it.

The principal contained in Section 10 of the Act is that a right of transfer is incidental to, and inseparable form, the beneficial ownership of the property. The principal under this Section is self-evident proposition. One cannot transfer a property to its total destruction. The right of owner does not include the liberty to destroy the ownership. The owner can destroy the property but he can't destroy the ownership. Whosoever, is the owner of an estate, he has

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52 Act XVII of 1927: Section 10 Legislative Assembly Debates 14 September 4352 (1927).
53 Supra note 50 at 265.
54 Act 4 of 1882.
55 Section 10 of this Act provides that "where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lesser or those claiming under law: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Mohammadan, or Buddhist so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein)"
liberty to deal with the property in the same way as was done the ex-
owners. The owner has full liberty to transfer the property but has no
right to make it non-transferable for ever. It is unreasonable exercise
of the liberty to make the property non-alienable with the help of
condition or limitation in this regard. In order that the Section or
general principle lying under it may apply, it is necessary that
allocation restrained must be of property transferred. It does not
matter whether such property is estate in fee simple or life interest or
any other lesser estate. Transfer is valid, restriction is void, partial
restraint is valid. Thus it is clear that restriction on further alienation
is void.

Under Exception II of Section 10 of the Act, when a transfer is
made for the benefit of a woman, (other than a Hindu, Mohammaden
or Buddhist) a restriction on alienation during her coverture can be
imposed. This exception is intended to protect Parsi, Jew or Christian
married woman from yielding to the asperities on blandishments of
her husband and disposing of her property for the benefit of her
husband.\footnote{Sikh and Jain women do not get advantage of this exception in view of the fact that definition of ‘Hindu’ in various enactments and Explanation 2 of the Article 25 of the Indian Constitution includes these in Hindu. Buddhists are also Hindus but in view of specific mention, these women may enjoy the protection of the exception.} Second exception shows that restriction on Hindu,
Mohammedan or Buddhist women during her marriage for further
alienation cannot be imposed. If any such restriction is imposed on
Hindu, Mohammedan or Buddhist women, the restriction will be void.
However, such restriction on other women belonging to various
religions viz., Christian, Parsi or Jain may be imposed.

It is important to clear here that sometimes such restriction on
further alienation made for the benefit of married women may be
detrimental to her due to her personal circumstances. She may also
require some funds to meet her needs, and it is possible that her
financial crisis can be removed by selling her property. In such
circumstances, it appears that the provision of her discretion to transfer the property may be helpful to meet her financial requirements. Thus, it appears just and proper that the existing law under Section 10 of the Transfer of Property Act, 1882 must be amended accordingly.  

The Hindu Disposition of Property Act, 1916

Under the classical law Hindus were permitted to transfer the property by a gift or by a will provided the beneficiary was in existence on the date of the making of the gift or the settlement. A gift to a person not in existence on the date of such a transfer was void. The Act enabled a Hindu to make a disposition of property in favour of persons not in existence on the date of making the settlement. A Hindu could now make a gift or settlement in favour of a person subject to the creation of a prior interest in favour of a living person on whose death the entire property was to go to such unborn person provided he comes into existence on the date of the death of such intermediary. This Act was specifically extended to the Khoja community. Where a government of opinion that the Khoja community in the Punjab any part thereof desire that the provisions of this Act should be extended to such community, it may, by notification in the Official Gazette, declare that the provisions of this Act, with the substitution word "Khojas" or "Khoja", as the case may be, for the word "Hindus" or "Hindu" wherever those words occur, shall apply to

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57 Anjani Kant (Dr.) and (Smt.) Suman Lata, "The Transfer of Property Act, 1882 in Twenty First Century" AIHC (May) Journal 68 (2010).
58 Act 15 of 1916.
59 The Hindu Disposition of Property Act (Act 15 of 1916). The Hindu Transfer and Bequests Act (Madras Act of 1914) and the Hindu Transfers and Bequests Act (City of Madras) (Act 8 of 1921). Later the provisions of Ss.113-116 of the Indian Succession Act, 1925 were made applicable to Hindus and in 1930, the application of provisions of Chapter II of the Transfer of Property Act, 1882 was also extended to Hindus.
60 Substituted for the words "the Province."
61 Substituted for the words "he", by the Adaptation Order, 1937.
62 Substituted for the words "Gazette of India".
that community in such area as may be specified in the notification, and this Act shall thereupon have effect accordingly.

**The Hindu Inheritance (Removal of Disabilities) Act, 1928**

There were several impediments under Hindu law relating to inheritance and some of them were related to physical and mental disabilities while others were linked to morality, rules of public policy, and even religion. These impediments were in the way of a person inheriting the property of another. Accordingly, persons incapable of managing or dealing with their property, blind, deaf and dumb, idiot or insane, an unchaste widow, the murderer of the intestate, a person suffering from absolute lameness or loss of limbs, an outcaste or a person converted to another faith or those incapable to perform sacrifice and religious ceremonies were disqualified from inheritance. The Act provides that no one could be excluded from inheritance under the broad category of ‘Disease and deformity’ except a person who was by birth a lunatic or an idiot. Thus, only the mentally challenged and not the visibly impaired or physically handicapped, suffered from incapability to inherit. It however did not affect the rule of disqualification imposed on an unchaste widow or a murderer or the one in respect of any religious office or service or management of a religious institution or a charitable trust.

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63 Act 12 of 1928.
64 Maureji v. Parvathibai (1876) 1 Bom 177; Gunjeshwar Kunwar v. Durga Prashad Singh (1917) 44 IA 229, Mahesh Chunder v. Chunder Mohan (1975) 14 BLR 273.
65 Pareshmain v. Dimanath (1862) 1 BLR (ACJ) 117; Ankul Chandra Bhattacharya v. Surendra Nath Bhattacharya, ILR (1939) 1 Cal 592.
67 Insanity did not mean want of ordinary intelligence; Tirummanagal v. Ramaswamy (1863) Mad 214. It need not be congenital; Ram Singh v. Bhanu (1916) 38 All 117. Subsequent lunacy is not a disqualification Parameswaran v. Parameswaran AIR 1961 Mad 345.
68 Ganga v. Ghasita (1879) All 46; Dal Singh v. Drini (1910) 32 All. 155.
69 Vedammal v. Vedanayaga (1908) 31 Mad 100.
70 Venkata Subbarao v. Purshothasam (1903) 26 Mad 113.
71 Subbaraya v. Ramasami (1900) 23 Mad 171.
72 Nalinaksha v. Rajani (1931) 58 Cal 1392. The rights of an outcaste or the one who converted to another faith were saved by the Caste Disabilities Removal Act, 1850.
The Act was not retrospective and it is very relevant to point out that it did not apply to those governed by the Dayabhaga law.\textsuperscript{73}

**The Hindu Law of Inheritance (Amendment) Act, 1929\textsuperscript{74}**

In the twentieth century, various social reformers fought against social evils including the lower status of the women. One of its impacts in the field of legislation was the enactment of Hindu Law of Inheritance (Amendment) Act, 1929. It was felt that without economic independence, the position of women cannot be improved. So in order to give them some amount of economic security in the joint family, the Hindu Law of Inheritance (Amendment) Act, 1929 was passed. Although the interest of wives and husbands was safeguarded by the Acts of 1923 and 1927 yet this Act was passed in 1929, which aimed at giving preference to some nearer degrees of female heirs over certain remoter degrees of male heirs. The seeds of this Act were sown in 1923 when, on 15 February of that year, besides Kamath, T.V. Seshagiri Ayyar, also moved a Bill in the Legislative Assembly to change the order of inheritance in the Hindu family so as to give priority to certain female members.\textsuperscript{75} This was the first piece of legislation, bringing woman into the scheme of inheritance. It conferred inheritance rights on some female heirs i.e. son’s daughter, daughter’s daughter, sister and sister’s daughter. These females were made heirs after the father, in the order of succession, thereby creating limited restriction on the rule of survivorship.

Prior to the Act of 1929, the Mitakshara law also recognised inheritance by succession but only to the property separately owned by an individual, male or female. Before the Act of 1929, the Bengal, Banaras and Mithila sub schools of Mitakshara recognised only five female relations as being entitled to inherit namely widow, daughter, mother, paternal grandmother and paternal great grandmother. The

\textsuperscript{73} Muthummal v. Subramanya Swamy Devasthanam, AIR 1960 SC 601.

\textsuperscript{74} Act 12 of 1929.

\textsuperscript{75} Supra note 50 at 265.
Madras sub-school recognised the heritable capacity of a larger number of heirs that is of the son's daughter, daughter's daughter and the sister, or heirs who were expressly named as heirs in the Act of 1929. The Bombay school, which was most liberal to women, recognised a number of other female heirs including a half sister, father's sister and women married into the family such as stepmother, son's widow, brother's widow.

**The Hindu Women's Right to Property Act, 1937**

Another enactment which brought about a radical change in the law relating to rights of widows was the Hindu Women's Right to Property Act, 1937 (hereinafter cited as the Act of 1937). The Act of 1937 was the outcome of realisation of the gross injustice under which Hindu wife had lived for centuries and against which the enlightened ones had started raising their voice. The one of the reason for the unsatisfactory state of affairs, particularly concerning the women's right to property, was that men, actuated by selfish interest, wanted that their women should not become independent and should live under their tutelage forever i.e. as daughter, wife or mother, so that the family was ruled by male *patria potestas*.

The Act of 1937 was a landmark legislation conferring ownership rights on women. This Act brought about revolutionary changes in the Hindu Law of all schools, and brought changes not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. The Act, of course did not affect succession to impartible estates and other properties, which, by custom or grant, descend to a single heir. As to them, the older law remained unaffected. Though Section 2 of the Act says that the provisions of the Section will apply where a Hindu dies intestate, it

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76 Act 18 of 1937. The Act was repealed by Section 31 of the Hindu Succession Act, 1956. The repeal however did not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act. It is very interesting to note that said Section 31 has also being repealed by the Repealing and Amending Act, 1960 (Act 58 of 1960).

77 The Act came into force on the 14th April, 1937 and had no retrospective operation.
is clear from the provisions of the Act that it applies only to the property of a Hindu male and not to that of a Hindu female. This Act enabled the widow to succeed along with the son and to take a share equal to that of the son. But, the widow did not become a coparcener even though she possessed a right akin to a coparcenary interest in the property and was a member of the joint family. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights.\textsuperscript{78}

As the Act did not apply to agricultural property, a widow who did not receive a share out of such property still retained her maintenance rights out of this property.\textsuperscript{79} However in places where the Act did apply to agricultural land she was not entitled to maintenance but to the rights of inheritance or the right to step into the shoes of her deceased husband.\textsuperscript{80} The important Section-3 conferred coparcenary rights on widows.\textsuperscript{81}

\textsuperscript{78} Vidyavathi Devi (Smt) v. CGT (1986) 69 ITR 708 (Raj)
\textsuperscript{79} Sarojini Devi v. Subramayam, ILR (1945) Mad 61. See also Venkata Subbarathamara v. Krishniah, AIR 1943 Mad 417.
\textsuperscript{80} Some of the States had passed parallel legislations e.g., The United Provinces, Madras, Bihar and Bombay making the Act applicable to the agricultural property.
\textsuperscript{81} Section 3 : (1) When a Hindu governed by the Dayabhaga School of Hindu law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall subject to the provisions of subsection (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son:
Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there a surviving a son or son's son of such predeceased son:
Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.
(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of subsection (3), have in the property the same interest as he himself had.
(3) Any interest devolving on Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.
(4) The provisions of this section shall not apply to an estate, which by customary or other rule of succession or by the terms of the grant applicable thereto descends on a single heir, or to any property to which the Indian Succession Act, 1925 applies.
This Act was hailed as opening a fresh chapter in the history of women's right to property. It was criticised in some quarters as it would lead to a breakup of Hindu Joint Family system. According to some others, it was nothing more than half hearted attempt to tackle the problem of women's right to property. The Act introduced many important changes in the law of succession among Hindus. This was not retrospective in its operation and did not apply to the property of any Hindu who died intestate before the commencement of this Act. Nor did it apply to the widow of any coparcener who died before the Act came into force. The main features of the Act were:

1. In case of separate property:
   (a) the widow alongwith sons was entitled to equal share with that of the son.
   (b) a pre-deceased son's widow inherited in like manner as the son, if there was no son surviving of such pre-deceased son, and in like manner as a son's son if there is surviving a son or son's son of such pre-deceased son.
   (c) the same provision applied *mutatis mutandis* to the widow of a pre-deceased son of a pre-deceased son.

2. In case of *Mitakshara* joint family, the widow took the place of her husband.

   It introduced far reaching changes in the law of succession and was obviously intended to give better rights to women by recognising their claim to fair and equitable treatment in certain matters of succession. But unfortunately the rules of devolution set out in the Act were so framed that an attempt to resolve one difficulty had often caused misconception and great difficulties in other cases. The Act in its consequences touched many branches of Hindu Law such as joint

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82 It effected the Law of coparcenary, partition, alienation and succession.
family and partition, adoption, maintenance and disqualifications for inheritance and also illustrated how piecemeal legislation could result in contradictions and unexpected situations. It raised problems which did not ambit of logically consistent answers and difficulties found in interpreting the enactment had been pointed out in numerous decisions.\textsuperscript{83}

The Act replaced the rule of Hindu law recognised in all States, except in Madras where it had become obsolete, that a widow was entitled to a share when her sons or her step-sons actually divided the estate between themselves.\textsuperscript{84} Under the Act the widow on her husband’s death got a right to the same share as a son along with her sons or step-sons, independent of any partition which might or might not be entered into by them. For instance, even where her husband leaves an only son and there can be no question of partition, she succeeds along with him for the shares of a son. The Act brought the Mitakshara and the Dayabhaga systems closer together by conferring upon the widow of a member of an undivided family the right to inherit his coparcenary interest. And in every case she will be entitled to enforce a partition. The Supreme Court in \textit{Ragubir Singh v. Gulab Singh}\textsuperscript{85} ruled that right to maintenance of a Hindu female is a pre-existing right that existed even under Shastric Law and it was not created by the Act of 1937.

While the object of the Act was to confer new rights of succession upon the widows mentioned in it, it not only altered the order of succession, but also involved far-reaching consequences in many departments of Hindu law, particularly in the law relating to a Mitakshara coparcenary.

\textsuperscript{83} S.R. Myneni, \textit{Women and Law} 56 (2010).
\textsuperscript{84} \textit{Pratapmull Agarwalla v. Dhanabati Bibi} (1936) IA 33 Cal 691.
\textsuperscript{85} \textit{AIR} 1998 SC 2401.
Hindu woman's estate recognised a woman's pre-existing Hindu law right to claim maintenance and the legislature did not intend to create a new kind of interest in her favour nor it intended to make her to become a coparcener, though her interest in the family property is to be the same as that of her deceased husband, except that it becomes the estate of the widow. If the widow also died without there being any partition during her life-time, the right of her husband would automatically stand devolved upon the other surviving coparceners of the family. The Act of 1937 has been repealed by the Hindu Succession Act, 1956.

**The Indian Succession Act, 1865**

The Indian Succession Act, 1865 was passed with a view to unify and simplify the multiplicity of laws prevalent in governing different communities. It incorporated the Roman and English principles of inheritance laws and laid down a simple uniform scheme providing for succession to the property of an intestate. It did not differentiate between separate and ancestral property, nor did it accord any preferential rights to the son. Granting an absolute right in the properties to the women, it preferred them to male collaterals and treated a son and daughter totally at par with each other. The major communities in India rejected this Act and therefore its application was confined only to some Christians and the Jews. Later on, its application was also extended to Indians who married under the Special Marriage Act, 1872, and to the issue of such marriage.

**The Indian Succession Act, 1925**

The Indian Succession Act, 1925, incorporated the Roman and English principles of inheritance and a uniform scheme of inheritance

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86 Obanna (M.P.) v. Anjaneyulu (K.B.) 2000 (1) HLR (AP) 52.
87 In States of Mysore and Baroda, the Statutes were passed with a view to conferring better rights on Hindu Women. These were, Mysore Hindu Law Women's Rights Act, 1933 and Hindu Nibandha, 1937 (Baroda).
88 Act 10 of 1865.
89 Act 39 of 1925.
is provided irrespective of the sex of the intestate. It is strange to note that the Act de-recognises adoption\textsuperscript{90} for the purposes of inheritance and difference of religion between the heir and the intestate is of no consequence. The preference of succession is determined in terms of nearness of relation to the deceased. Accordingly, surviving spouse and lineal descendents are made the primary heirs.\textsuperscript{91} The principles of representation apply without any reservations to lineal descendents and with same restrictions to the brothers and sisters of the deceased and their descendents.\textsuperscript{92} In all other cases the general rule of nearer in degree excluding the more remote applies.\textsuperscript{93} The Act treats agnates and cognates\textsuperscript{94} and male and female heirs equally. All blood relations whether full-blood, half-blood or uterine blood are treated on par.\textsuperscript{95} The only gender discriminatory provision is the exclusion of the mother in presence of the father.\textsuperscript{96} The Act concentrates on securing the rights of the widow of a deceased with special provisions in case of small estates.\textsuperscript{97}

The below mentioned provisions are available to Hindu, Buddhist, Sikh or Jain women\textsuperscript{98} on or after the first day of September 1870 within the territories which at the said date were subject to the State Government of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay.\textsuperscript{99} These are also available to all such Wills and Codicils made outside those territories and limits so far as relate to immovable property situate within those territories or limits and to all Wills and Codicils made by any Hindu Buddhist, Sikh or Jain, on or after the

\textsuperscript{90} Runbir Karan v. Joginder Chandra, AIR 1940 All 135.
\textsuperscript{91} Section 33 of the Indian Succession Act, 1925.
\textsuperscript{92} Sections 37, 40 and 44, \textit{ibid}.
\textsuperscript{93} Section 48, \textit{ibid}.
\textsuperscript{94} Section 27(a), \textit{ibid}.
\textsuperscript{95} Section 27(6), \textit{ibid}.
\textsuperscript{96} Sections 42 and 43, \textit{ibid}.
\textsuperscript{97} Section 33A, \textit{ibid}.
\textsuperscript{98} Section 57 & Schedule III, \textit{ibid}.
\textsuperscript{99} Section 57 & Schedule III, \textit{ibid}.
first day of January, 1927. Marriage shall not revoke any such will or codicil.  

A married woman of sound mind not being a minor may dispose of by will any property which she could alienate by her own act during her life. Even a deaf, dumb or blind married woman can make a Will if she is able to know what she does by it and even if she is ordinarily insane, may make a will during an interval in which she is of sound mind. But she cannot make a will while she is in such a state of mind, whether arising from intoxication or from illness or from any other cause that she does not know what she is doing.  

A Will or any part of a Will, the making of which has been caused by fraud or coercion, or any such importunity as takes away the free agency of the testator is void. A Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

The Hindu Gains of Learning Act, 1930

Prior to the passing of this Act, there was a controversy and conflict in judicial opinions that whether the gains of learning, where learning was imparted at the cost of joint family funds, should be the separate property of the acquirer or coparcenary property. The predominant view was that the income earned by a member of the joint family, by practising a profession or occupation requiring special training, was joint family property, if such training was obtained by the member with the help of joint family funds. Judicial opinion was based on the dictates of the Shastric texts, some of which provided (though distinguishing between general and special learning),

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100 Ibid.
101 Section 59, ibid.
102 Section 61, ibid.
103 Section 62, ibid.
104 Act 30 of 1930.
105 supra note 2 at 137.
106 Lakshman v. Jannabai (1882) ILR 6 Bom 255.
that what is acquired at the expense of joint family funds, would be partible at the instance of the family members.\textsuperscript{107} Narada expressly provided that\textsuperscript{108} ‘He who maintains the family of a brother, while that brother was engaged in study, shall get a share from the later’s money that he makes with the help of this learning.’

To put an end to this controversy and set the confusion at rest the Hindu Gains of Learning Act was passed in 1930. That was sponsored by Dr. Mr. Jayakar.\textsuperscript{109} The Act aimed to clarify the doubts and provide a uniform rule with respect to the character of acquisitions made by a person whose education and training were financed by joint family funds. The Act has defined learning as "the education which a coparcener has received, is whether elementary, technical, scientific, special or general and includes training of every kind which enables a person to pursue any trade, industry, or avocation or profession in his life."\textsuperscript{110} The Act has further provided that any property acquired by virtue of such learning shall be held as exclusive and separate property of the acquirer whether the learning has been wholly or in part imparted to him by any member, living or deceased\textsuperscript{111} of his family or with the aid of the funds of the joint family or of any member thereof or by reason of himself or his family is being supported wholly or in part by the joint funds of the family or the funds of any member thereof while he was acquiring his learning.\textsuperscript{112} It did not affect any partition or an agreement to partition or a transfer that was effected before the Act was passed.\textsuperscript{113} It is important to point

\textsuperscript{107} Mitakshara I, Vol. IV, 7, 8, 9-14.
\textsuperscript{108} Mitakshara I, Vol. IV, 8.
\textsuperscript{109} The Hindu Gains of Learning Bill was passed by the Madras Legislature, in 1901, at the instance of Sir Bhashyam Iyenger, but it could not see the light of day as it was vetoed by the Governor of Madras.
\textsuperscript{110} Section 2 of the Hindu Gains of Learning Act, 1930.
\textsuperscript{111} Section 3, \textit{ibid}.
\textsuperscript{112} Section 3, \textit{ibid}.
\textsuperscript{113} Section 4, \textit{ibid}. 
out that the Act was retrospective in application and was declaratory in nature.\textsuperscript{114}

**The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946\textsuperscript{115}**

In 1946, the Hindu Married Women's Right to Separate Residence and Maintenance Act was passed which provided for separate residence and right to maintenance to Hindu wife from her husband even without having judicial separation under certain circumstances. These were such as (1) if he is suffering from any loathsome disease not contracted from her; (2) if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him; (3) if he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish; (4) if he marries again; (5) if he ceases to be a Hindu by conversion to another religion; (6) if he keeps a concubine in the house or habitually resides with a concubine; and (7) for any other justifiable cause. The Act made her legal status and social position better than before. This Act has now been repealed by the Hindu Adoptions and Maintenance Act, 1956.\textsuperscript{116}

**POST INDEPENDENCE POSITION**

**The Constitution of India, 1950**

A Constitution means a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of those organs.\textsuperscript{117} The Constitution aims at creating legal norms, social philosophy and economic values, which are to be effected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals.\textsuperscript{118}

\begin{itemize}
\item \textsuperscript{114} Basant K. Sharma (Dr.), *Hindu Law* 295 (2011).
\item \textsuperscript{115} Act XIX of 1946.
\item \textsuperscript{116} Act 78 of 1956.
\item \textsuperscript{117} Wade and Philips, *Constitution Law* 1 (1946).
\item \textsuperscript{118} *Supra* note 83 at 64.
\end{itemize}

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A reading of the Indian Constitution shows that it is in attuned to the issues of sex equality, which were prominently debated when the Constitution was adopted. The framers of Constitution were very conscious of deeply entrenched inequalities, both those based on caste and those based on sex. With regard to the women, the Constitution contains many negative and positive provisions which go a long way in securing gender justice. While incorporating these provisions, the framers of the Constitution were well conscious of the unequal treatment meted out to the fairer sex from the time immemorial. 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 upliftment of the status of women. The rights guaranteed to the women are on par with the rights of men and in some cases the women have been allowed to enjoy the benefit of certain special provisions.

Gender equality, as an ideal, has always eluded the Constitutional provisions of equality before law or the equal protection of law. This is because equality is always supposed to be between equals and since the judges did not concede that men and women are equal, gender inequality did not seem to them to be a legally forbidden inequality.

The Constitution of India contemplates a new order based on equality of status and opportunity, enshrined in the Preamble of the Constitution, Fundamental Rights and Directive Principles of State. This trinity is intended to remove discrimination or disability on

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119 The Indian Constitution adopted by the Constituent Assembly on 26th November, 1949 is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity.


121 Supra note 50 at 1.

ground only of social status or gender. It was a tryst with destiny that
discrimination on the basis of caste, sex, religion should be wiped out
and equality should permeate and inform all institutions in our
country. The dignity of the individual and equal and inalienable
rights to all persons in the society is the Constitutional mandate.
Equality provisions enshrined in our Constitution are the beacon
lights to guide our land to the constitutional goals.\textsuperscript{123}

Under the Constitution of India, women have been accorded
equal rights with men. The Preamble of the Constitution contains the
solemnly resolves to secure among other things, equality of status and
of opportunity to all citizens. Equality of sexes is enshrined in the
Preamble of the Constitution, Fundamental Rights and any law which
discriminates on the ground of sex is contrary to the provisions of the
Constitution.\textsuperscript{124} According to Article 14, State shall not deny any
person equality before the law or equal protection of the laws and
State shall not discriminate against any citizen on grounds only of
religion, race, caste, sex and place of birth or any of them.\textsuperscript{125} Article
15(3) makes provisions for protective discrimination \textit{interalia}, for
women. In this sphere several laws have been made,\textsuperscript{126} in the shape of
Dowry Prohibition Act, 1961, Section 498-A and 304-B in the Indian
Penal Code, 1860 and Protection of Women from Domestic Violence
Act, 2005 etc. The courts felt constrained to streamline the
application of Article 15(3) to cover situations like socio-economic
backwardness of women. Article 15(3) was rightly protected by the

\textsuperscript{123} S. Cyril Mathias Vincet, “Personal Laws, Human Rights and the Supreme Court - A Case of
missed opportunities.” 89 \textit{AIR} 235 (2002).
\textsuperscript{124} Part II of the Constitution of India, 1950.
\textsuperscript{125} Article 14 of the Constitution: \textit{Meneka Gandhi v. Union of India}, AIR 1978 SC 597; \textit{Unni
\textit{Smt. Heena Kausar v. Competent Authority}, AIR 2008 SC 2427; \textit{Cochin University of Science
courts as a lever of social change since its object, as explained from time to time by the Supreme Court of India has been to fight the centuries old socio-economic handicaps of women\(^{127}\) which have retrospectively contributed to their backwardness in all its shades. Order 5, Rule 15 of the Code of Civil Procedure, 1908, as amended by Code of Civil Procedure (Amendment) Act, 1976, provided that the summons can be served on any adult member of the family, whether male or female who is residing with him.\(^{128}\) Section 354 of the Indian Penal Code, 1860 is not invalid because it protects the modesty only of women and Section 488\(^{129}\) of the Code of Criminal Procedure, 1898 is valid although it obliges the husband to maintain his wife but not \textit{vice versa}.\(^{130}\) Similarly, Section 14 of the Hindu Succession Act, 1956 converting the women’s limited ownership of property into full ownership has been found in pursuance of Article 15(3).\(^{131}\) The language of clause (3) is in absolute terms and does not appear to restrict in any way the nature or ambit of special provisions which the state may make in favour of women or children.\(^{132}\) Another specific example of equity of status is the right to equality of opportunity for citizens of India.

Article 16(1) and 16(2) lay down equality in the matters relating to employment or appointment to any office under the State. Discrimination on the basis of sex has been specifically prohibited under the Constitution so as to bring women at par with men. Sex shall not be the sole ground of ineligibility for any post.\(^{133}\) Equality of opportunity has been demonstrated and emphasized by the Supreme

127 In the absence of such an attitude of the court, women appeared to be genuine to accept all such guarantees, promises and other concessions laid down in the Constitution with a spoon of salt.

128 Previously, Order 5, Rule 15 provided that the summons were to be served on the male members and not on female members of the family.


130 Shahdad v. Mohd. Abdullah, AIR 1967 I&K 120.


Court of India in *C.B. Muthamma v. Union of India.*\(^\text{134}\) This case was related to the Indian Foreign Service (Recruitment, Seniority and Promotion) Rules, 1961 which provided that woman in service should seek permission before her marriage is solemnized and further she may be required to resign if the Government is satisfied that her family and domestic commitment comes in the way of her duties. This rule was declared by the Court as in defiance of Article 16 of the Indian Constitution.\(^\text{135}\)

Directive Principles of State Policy also enumerate certain directives for the emancipation of women. The manifest declaration of the Constitution to achieve equality of status is a directive under Article 39. The principle underlying this provision is "equal wages for equal work" irrespective of "sex". For the attainment of these objects suitable provisions have been included in various labour laws passed from time to time.\(^\text{136}\) In this regard various International Labour Conventions and recommendations of the International Labour Organization have also been passed. *The Equal Remuneration Convention, 1951* provided for equal remuneration for work of equal value-regardless of 'sex' was ratified by India in the year 1958 and consequently the Equal Remuneration Act was passed in 1976.\(^\text{137}\) In *Madhu Kishwar v. State of Bihar*\(^\text{138}\), the Supreme Court dealt with the validity of the Chota Nagpur Tenancy Act, 1908 of Bihar which denied the right of succession to Scheduled Tribe women as violative of the right to livelihood. The majority judgement however upheld the validity of legislation on the ground of custom of inheritance/succession of Scheduled Tribes. Dissenting with the majority, Justice


\(^{135}\) Part IV of Constitution of India, 1950.

\(^{136}\) These laws are: the Equal Remuneration Act, 1976, the Bonded Labour System (Abolition) Act, 1976, the Factories Act, 1948, the Mines Act, 1952, the Workmen’s Compensation Act, 1923, the Plantation Labour (Amendment) Act, 1981 and several other Statutes.

\(^{137}\) *Supra* note 133 at 177.

\(^{138}\) (1996) 5 SCC 145.
K. Ramaswamy felt that the law made a gender-based discrimination and that has violated Articles 15, 16 and 21 of the Constitution.

According to Article 51A(e) its the duty of every citizen to preserve the dignity of women. The Supreme Court has highlighted the right of the women in India to eliminate gender based discrimination particularly in respect of property so as to attain economic empowerment. The 73rd and 74th Amendments of the Constitution effected in 1993, provided for reservation of seats for woman in the local bodies of Panchayats and Municipalities, and this was laying a strong foundation for their participation in decision-making at the local levels. Steps are also being taken to extend these provisions to legislative Assemblies and Parliament. The Women's Reservation Bill is passed in 2010 by Rajya Sabha, but it is still pending in Lok Sabha, which seeks to reserve one third of all seats for women in the Lok Sabha and the State Legislative Assemblies. It also provides that one-third of the total number of seats reserved for Scheduled castes and Scheduled Tribes shall be reserved for women of these groups. Reserved for women of these rotations to different constituencies in the state or union Territory, it also provided that reservation of seats for women shall cease to exist 15 years after the commencement of this Amendment.

From the above discussion it is clear that Constitution of India itself provides special protective clause in favour of women.

Although the Constitution protects sex equality and free choice of religion, it also retains plural system of personal laws. In India each community is governed by its own personal laws. The Hindus

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140 Article 243-D and 243-T under Parts IX and IX-A of the Constitution have been added by the 73rd and 74th Amendments, popularly known as the Panchayati Raj and Nagarpalika Constitution Amendments Acts.
142 Muslim, Hindu, Parsi and Christian.
are governed by the Hindu laws that are patriarchal in nature. It is since ages that Hindu woman is dominated by patriarchal society. Earlier she was considered as ‘paraya dhan’ (some else’s wealth). She was given right to stridhana properties but not to the joint family property in which she had only right to maintenance. In the matters of adoption her position was inferior in comparison to her husband. Her rights of property and maintenance were extremely curtailed. In the following study an attempt has been made to explore the Hindu laws that dealing with the proprietary position of women :-

I. The Hindu Marriage Act, 1955\(^{143}\)

The Hindu Marriage Act, 1955 has brought about radical changes in the concept of marriage. This Act has amended and codified the law relating to marriage among Hindus. Section 27 of the Act deals with disposal of property. The Matrimonial Court trying any proceedings under this Act, has the jurisdiction to make such provision in the decree as it deems just and proper with respect to any property presented at or about the time of marriage, which may belong jointly to both the husband and the wife. The Section has two requisites:

\(a\) The settlement of property can be made only at the time of the passing of the decree i.e., when the Court grants a decree in a matrimonial cause, and not at any time subsequent thereto.

\(b\) Orders relate only to the joint property of the spouses which has been presented to them at or about the time of the marriage. The property of the parties acquired by them before or after the marriage is not within the purview of the Section.

   The Court is free to make any settlement of the joint property of aforesaid description either for the benefit of any spouse or children. It may distribute the property among the

\(^{143}\) Act 25 of 1955.
spouses. In either case property must jointly belong to the husband and wife.

2. **The Hindu Adoptions and Maintenance Act, 1956**

   This part of Hindu Code deals with the subject of adoption and maintenance among Hindus. The position of adopted child in respect of inheritance under the Hindu Succession Act, 1956 is the same as that of a natural born child. The adopted child will have equal right of succession to his/her adoptive parents and collaterals on both father and mother side and accordingly all persons in the adoptive family will have right to succeed to him as if he/she were a natural born child.

   The child would not be divested of any property which at the time of adoption is vested in him. Thus, any property which the child has inherited from any relation would continue to vest in him even after adoption. Section 13 of this Act deals with a right of adoptive parents to dispose of their properties and it specifies that subject to any agreement to the contrary an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by Will.

**The Hindu Adoption and Maintenance (Amendment) Act, 2010**

   The empowerment of women by various legislative as well as other measures is an avowed policy of the Government and bringing complete equality for them in all spheres of life is, therefore, a matter of utmost concern. This objective and policy of the Government have also been reiterated in the President’s Address to the first session of both Houses of Parliament held on the 4th June, 2009. The National Common Minimum Programme of the then Government (2004-2009)

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144 Act 78 of 1956.
145 Section 12(a) of Hindu Adoptions and Maintenance Act, 1956.
146 ‘Vested Property’ means where indefeasible right is created, i.e., on no contingency it can be defeated.
147 Section 12(b) of Hindu Adoptions and Maintenance Act, 1956.
also enunciated that complete legal equality for women in all spheres of life will be made a practical reality, especially by removing discriminatory legislation and by enacting new legislation that gives women, for instance, equal rights of ownership of assets like houses and land. There is a growing demand for making laws free from gender bias and to provide legal equality to women in all spheres of life. It directs that women shall have equal rights and privileges along with men and that the State may make special provision for the welfare of women. To achieve these types of objectives, the Hindu Adoptions and Maintenance Act, 1956 was amended, so as to bring in gender equality therein.¹⁴⁹

Chapter III of the Act deals with the matters of maintenance and Section 18 of this Act deals with the maintenance of wife. A Hindu is under an obligation to maintain his wife, his minor sons, unmarried daughters and aged parents. The obligation is personal and arises from the very nature of the relationship and exists whether he possesses any property or not. The Hindu Adoptions and Maintenance Act give statutory form to that obligation. The right of a Hindu wife for maintenance is an incident of the status of matrimony. Sub-section(1) of Section 18 of the Act substantially reiterates that right and lays down the general rule that a Hindu wife whether married either before or after the commencement of the Act is entitled to be maintained by her husband during her life time. The rule laid down in this section is subject to the exceptions stated in sub-section (3) which lies down that she cannot claim separate residence and maintenance if she is unchaste or ceases to be a Hindu by conversion to another religion. Under sub-section (2) of Section 18, wife is entitled to live separately from her husband without forfeiting her claim for maintenance, in the circumstances stated in clauses (a) to (g) mentioned in that sub-

¹⁴⁹ Sections 8 and 9 have been amended by the Marriage Laws (Amendment) Act, 2007.
section. Under clause (d), wife is entitled for separate residence without forfeiting her claim for maintenance if her husband has been living with other wives. The claim for maintenance is maintainable under this section irrespective of the fact that the marriage had taken place after or before the marriage of the applicant wife, provided the other wife is living. Undoubtedly, it is true that this Act is a piece of beneficial legislation conferring maintenance rights on a woman whose marriage is performed under Hindu Marriage Act. If it is felt that a particular enactment causes hardship or inconvenience, it is for the legislature to redress it, but, it is not open to the court to ignore the legislative injunction.

Section 19 of the Act provides for the maintenance of widowed daughter-in-law. This Section mandates that a Hindu wife whether married before or after the commencement of the Act shall be entitled to be maintained after the death of her husband by her father-in-law. Other hurdle in way of her maintenance right from father-in-law is that any obligation under this Section shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not got any share or any such obligation ceases on the re-marriage of the daughter-in-law. Section 19 is a complete scheme in itself which provides for an obligation and also its enforcement. It creates a right in daughter-in-law with corresponding liability on father-in-law.

Section-20 deals with maintenance of children and aged parents. This Section stipulates that a Hindu parent is liable to maintain his legitimate or illegitimate male or female children. Normally such liability to maintain the child, whatever is the sex, would continue until the child attains majority whether the child is or is not able to maintain itself out of its earnings or other property. So

far as the male child is concerned, his right to claim maintenance would cease when he attains the age of majority. But so far as the female child is concerned, such right will continue even after she attains majority until she gets married provided she is unable to maintain herself out of her own earnings or other property.151

3. The Hindu Minority and Guardianship Act, 1956152

The other installment of the Hindu Code is the Hindu Minority and Guardianship Act, 1956 (Here in after read as HMGA, 1956) and it deals with the law relating to minority and guardianship. According to Section 6, where the father though alive does not care for his minor children mother can be considered to be natural guardian. It authorises a natural guardian to deal with the interest of a minor in the joint family property but not with his separate property. A natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the Court.153 This restriction has the object of saving the minor’s estate from being misappropriated or squandered by any person, by a relation or a family friend claiming to be a well-wisher of the minor. Section 11 was enacted to prohibit any such person from alienating the property of the minor. Even a natural guardian is required to seek permission of the court before alienating any part of the estate of the minor and the court is not to grant such permission to the natural guardian except in case of necessity or for an evident advantage to the minor. So far as a de facto guardian or de facto manager is concerned, the statute has in no uncertain terms prohibited any transfer of any part of minor’s estate by such a person. In view of the clear statutory mandate, there is little scope for doubt that any transfer in violation of the prohibition incorporated in Section 11 of the Act is ab-initio void.

151 Ibid. at 137.
152 Act 32 of 1956.
153 Section 8 of the Hindu Minority and Guardianship Act, 1956.
The Special Marriage Act, 1954\textsuperscript{154}

In addition to conduct procedure, matrimonial remedies etc., this Act also deals with succession to the persons who marry or whose marriage is registered under the provisions of the Special Marriage Act, 1954. However, if both the parties who have solemnized their marriage under the Special Marriage Act, 1954 are Hindus, then succession to the property of either party will be governed by Hindu law, i.e., the Hindu Succession Act, 1956 and not by this Act.\textsuperscript{155} The present Special Marriage Act, 1954 had replaced the earlier Act with the same name that was passed in 1872. Under the Special Marriage Act, 1872, a coparcener upon marriage, automatically severed his membership of the coparcenary and of the joint family. The religion of the spouse was immaterial. So, a marriage of a coparcener with a Hindu woman, under the Special Marriage Act, 1872 also resulted in his severance from the coparcenary and the joint family. But the same couple if they married under the traditional Hindu law, continued as the members of the joint family. Therefore, it was the marriage under the statute that resulted in the severance of the status, and not merely the religion of the spouse. The marriage of a coparcener with a non-Hindu again had the same effects i.e., of an automatic outster from the joint family. But analogous to the consequences that a coparcener faces when he renounces his religion, upon his marriage to a Hindu or a non-Hindu, under the Special Marriage Act, 1872, his rights in the coparcenary property were not forfeited, but were specified and handed over to him.

\textsuperscript{154} Act 43 of 1954.

\textsuperscript{155} This has done by the Marriage Laws (Amendment) Act, 1976 which inserted Section 21-A in the Act. That Section runs : "where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jain religion, Section 19 and Section 21 shall not apply and so much of Section 20 concerned that creates disability shall also not apply."
This Act of 1872 was repealed and the new Act with modified provisions was passed in 1954. Section 21 of the Special Marriage Act, 1954 runs as under:

*Notwithstanding any restrictions contained in the Indian Succession Act, 1925 with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the Act and for the purposes of this Section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom.*

It seems to be obvious that the Section has been enacted to avoid inter-personal laws conflict in case parties belong to different personal laws. But the objective of the Section is not confined to that, since if two Muslims, two Christians or two Jews marry under the Act, succession to their property too will be regulated not by their personal law but by the Act. It seems that the object of the Section is also to provide a uniform law of succession to the property of those with respect to the statutory partition, i.e., a coparcener marrying under the Act, whether to a Hindu or to a non-Hindu, was faced with an immediate severance from the coparcenary. Where his marriage was solemnized under the Hindu law, with a Hindu woman, he would continue to be a coparcener and his wife would become a member of his joint family. If this marriage is later registered under the Special Marriage Act, 1954, persons who marry under the Special Marriage Act, 1954. It had an identical provision that would also operate as a severance of both the spouses from the joint family, since the consequences of an actual solemnization of the marriage under the Act, and the registration of an already solemnized marriage (under a

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different law), under this Act, are identical. In 1976, however, these provisions were modified and instead of a solemnization of marriage under the Act being the only test for a statutory partition. The religion of the spouse became a material factor. Post 1976, where a Hindu man marries a non Hindu woman, under Special Marriage Act, 1954 such marriage effects his automatic severance from the coparcenary as before.¹⁵⁷

**The Equal Remuneration Act, 1976¹⁵⁸**

It is also important to discuss here the Equal Remuneration Act, 1976. As directed, by Article 39 of the Indian Constitution, Equal Remuneration Act provides for equal remuneration to men and women alike. It provides that (a) in work of equal value, skill and effort, women are paid as much as men. (b) In opportunity for employment or promotion, women may not be discriminated against on grounds of gender except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force. Contravention of these laws is a punishable offence.

This Act provides for no discrimination in any condition of service subsequent to recruitment such as promotions, training or transfer. In addition under various Acts such as Plantation Labour Act, 1951, the Building and other Construction Workers Act, 1996 Factories Act, 1948 provision has been made for women to have separate rest rooms and toilet facilities. Recognising that child care is almost invariably the women’s province all establishments employing more than 20 women in a non-powered industry or ten women in a powered industry are compelled to provide child care facilities i.e. creches.¹⁵⁹

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¹⁵⁷ Ibid. at 220.
¹⁵⁸ Act 24 of 1976
Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, enacted to make a legal obligation for children and heirs to provide maintenance to senior citizens and parents, by monthly allowance. The secular provisions of the Act are great importance because these are concerned with general public irrespective of any religion, caste, creed etc. Today, those who do not come under the categories of parents and senior citizen, have after all to be included in future in these categories. Mostly the parents leave no stones unturned for the maintenance and welfare of their children, but children during old age, they feel disappointed. Keeping it in view, this Act has been enacted. This is an Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution of India.

This Act provides simple, speedy and inexpensive mechanism for the protection of life and property of the older persons. If a senior citizen after the commencement of this Act, has transferred his property either moveable or immovable by way of gift or otherwise, subject to the condition that the transferee shall provide him basic amenities and physical needs and thereafter such transferee refuses or fails to provide such promise, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence and the Tribunal can declare such transfer as void. Before the

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161 Initiated by Ministry of Social Justice and Empowerment, Government of India.
162 It extends to the whole of India except the State of Jammu and Kashmir. It applies also to Indian citizens outside India.
163 After being passed by the Parliament of India received the assent of President of India on 29 December, 2007 and was published in the Official Gazette of India on December 31, 2007.
165 Section 23 of the Act.
enactment of this law, a senior citizen has only remedy to approach the court for maintenance from their children to whom he had gifted the property by way of gift or otherwise and such property would be the exclusive property of the transferee and the senior citizen has no right in such property. But after the enactment of this Act, a senior citizen can reclaim his property from the transferee. The concerned police personnel will also ensure priority in dealing with these types of cases. Representations by lawyers are prohibited under Section 17 of this Act.

Abandoning a senior citizen in any place by a person who is having the care or protection of such senior citizen is a criminal offence and such person shall be punishable with imprisonment for a term which may extent to three months or fine which may extend to five thousand rupees or both. This Act also provides that State Government may establish old age homes at least one in one District to accommodate indigent senior citizen. State government also ensures proper medical care for senior citizens.

**PROTECTION OF WOMEN UNDER CRIMINAL LAW OF INDIA**

The discussion of protection of women under criminal law is necessary to judge the status and position of women. The framers of the Indian Penal Code and the Criminal Procedure Code, 1973, provided special provisions for women, including Hindu women. According to Section 10 of the Indian Penal Code, ‘Women’ denotes a female human being of any age or religion.

**The Indian Penal Code, 1860**

The Indian Penal Code does not make any distinction on the basis of sex. It is conformably applicable to all. The Indian Code has provided special provisions which afford protection to woman who

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168 Section 19, *ibid.*
could be a victim of the offences relating to her sex. It is also important to mention here that the special provisions relating to women are not exceptions but are special offences, because a woman faces many problems in her public and private life because of her womanhood, and social position. Provisions which give special protection to Indian women or deal with the offences which, either specially refer to women or protect women are: Dowry Death, Causing miscarriage without woman's consent, simple and grievous hurt wife beating, assault or criminal force to woman with intent to outrage her modesty, kidnapping, buying or disposing for the purpose of prostitution, sexual offences, cohabitation caused by a man deceitfully inducing a belief of lawful marriage, bigamy, adultery, cruelty to married woman, defamation to woman, etc. Section 406 of IPC provides punishment for criminal breach of trust and a woman can take protection under this provision. The same view has also opined by Apex Court in Bhasker Lal Sharma & Another v. Monica, and held that if the mother-in-law takes away the gifts given to the couple at the time of marriage, it amounts to breach of trust under Section 406 of IPC.

**Code of Criminal Procedure, 1973**

Like the Indian Penal Code, the Code of Criminal Procedure, 1898 has also provided some provisions in favour of women. These

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169 The offence of adultery under Section 497 of the Indian Penal Code which provides that a woman who has voluntarily participated in the office of adultery cannot be punished.
170 Section 304 B of the Indian Penal Code, 1860.
171 Section 313, 314 *ibid*.
172 Section 323, 325 *ibid*.
173 Section 354, *ibid*.
174 Section 363-369, *ibid*.
175 Sections 370-373, *ibid*.
176 Sections 376-376D, *ibid*.
177 Section 493, *ibid*.
178 Section 494-496, *ibid*.
179 Section 496-497, *ibid*.
180 Section 498-498-A, *ibid*.
181 Section 509, *ibid*.
182 AIR 2009 SC 343.
special provisions protect the weaker lot of that society. These protective provisions have been made in view of the special social and cultural background of women in India and keeping in view the Constitutional protective discrimination. Special laws can be made in favour of women within the framework of the Constitution of India. The repeated Code of Criminal Procedure, 1898 also had some of these special clauses in favour of women. But now the new Code of 1973 is altogether a revised Code and provides some new clauses to protect women, is constituent with Constitutional provisions and other social changes. It does not make any special provision for protection with regard to Hindu women and provides protection to women in general. Hindu women form major chunk of Indian women folk and therefore, it is proposed to study these provisions affording protection to the Hindu women under the Code.  

Section 125 of Cr.PC recognizes and gives effect to the fundamental and natural duty of a man to maintain his wife, children and parents. This is a legal obligation of his being husband, father and son or daughter capable of maintaining the claimant. According to a pronouncement of the Supreme Court of India, Hindu mother can demand maintenance from a married daughter, putting sons and daughters at par as far as Section 125 of the Code is concerned. Though this Section is equally applicable to persons of all religions; it has nothing to do with conjugal rights of the spouses but only and exclusively deals with the maintenance aspect. Section 125 provides that if any person having sufficient means, neglects, refuses to maintain his wife, legitimate or illegitimate minor child, or major child if not a married daughter or physically or mentally retarded child, or his father or mother, a magistrate can order him to maintain and give a monthly allowance for maintenance of such persons.

The Section provides that the word “wife” includes a divorced wife who has not remarried provided she does not live in adultery or she refuses to live with her husbands without sufficient reason or is living separately by mutual consent. This Section of the Code provides summary remedy to obtain maintenance which otherwise may take long to claim in civil law or other special laws. This Section gives a summary and quick remedy to the Hindu women to claim maintenance against her husband. Thus, this Section reiterates the basic human right of women to maintenance and puts a statutory duty on husband/son/father to maintain the wife/mother/unmarried daughter, infirm and minor children of the family. One who neglects or refuses to maintain violates a duty provided under the Act.

**The Dowry Prohibition Act, 1961**

The demon of dowry still exists in our society. It has been regular cause of degrading treatment to her not at the house of her in laws but even from the day of her birth. Many newly married brides and their lives to save them from the cruel treatment at her in laws house. The Parliament in its widow enacted the Dowry Prohibition Act, 1961. This Act is a small penal statute taking of dowry and it was laid down that dowry, if given, was to be treated as a trust in favour of the bride for whose benefit it was given. Realizing the increase in dowry related offences there have been various Amendments to make the Act more purposeful. The giving or agreement to give any valuable security directly or indirectly by one party to the other party of marriage or by parents is also covered within the purview of Dowry.

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186 Section 3 of the Dowry Prohibition Act, 1961.
188 The Act was amended by Act 63 of 1984. The Act was further amended vide Act 43 of 1986.
189 Section of this Act has provided that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to the marriage or to any other person at or before (or any time after the marriage) in connection with the marriage of the said parties.
11. OTHER LEGAL MEASURES CONCERNING WOMEN

In order to ensure that the constitutional protection provided to women does not remain merely a paper protection but is translated into reality, there has been a spurt of legislations in favour of women. These legislations are meant to safeguard the rights and interest of women. After discussing the legislations dealing directly or indirectly with the Hindu women's right to property, it is also important to discuss other legal measures, in brief, concerning with women and these are described as below:

3. The Industrial Laws of India:
   (a) The Payment of Wages Act, 1936.
   (b) The Factories Act, 1948
   (c) Employee’s State Insurance Act, 1948
   (d) Mines Act, 1952
   (e) Maternity Benefit Act, 1961
   (f) The Bidi and Cigar Workers (Conditions of Employment Act, 1966.
   (g) The Contract Labour (Regulation and Abolition) Act, 1979.
   (h) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
   (i) The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
4. Other Criminal Laws of India:
   (b) The Indecent Representation of Women (Prohibition) Act, 1986.
   (c) Immoral Traffic (Prevention) Act, 1986.
(e) Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

**PROPRIETARY POSITION OF WOMEN UNDER OTHER INDIAN PERSONAL LAWS**

**MUSLIM LAW**

“To Muslims, the Sharia law of Inheritance is ideally perfect; founded on the sure rock of divine revelation and worked out in the utmost detail by that mental ingenuity which God gave man for the purpose of understanding revelation. The logical strength of the system is beyond question.....”

Fitzgerald

Muslims are divided into two sects—Sunnis and Shias. This division was political in origin, as it centered around the question of who the successor of Prophet should be and the method of his appointment. Later on, jurisprudential differences also surfaced. However, for both the Shias and the Sunnis, the Quran and the Sunnat are the primary and foremost sources of Muslim law. The Sunnis are further divided into four sub-schools i.e. Hanafi School, Maliki School, Shafei School, Hanbali School and the Shias are divided into three sub-schools i.e. Zaidya School, Ismailya School and Ithana Ashari. Both of them have their own books and authorities. The propounders of the Sunni Schools, produced their own allegiance, but did it without antagonism to the other schools. They showed respect for the ability and knowledge of their predecessors and contemporaries and the work if one, refers occasionally, to the opinion of the writers of the other schools as well.191

191 *Supra* note 2 at 444.
The Muslim system of inheritance has been appreciated for its utility and formal excellence by all modern writers. The Muslim law of Inheritance which is based on the tenets of the holy Quran is basically different from the other indigenous systems of India. The distinction between the self acquired and ancestral properties, concepts of right by birth in coparcenary property, survivorship, partition etc. are not known to Islamic law of succession. No woman is excluded from inheritance only on the basis of sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property in lieu of maintenance. Every woman who inherits some property is its absolute owner like a man. There is no concept of either Stridhana or women’s limited estate. Consequently, there is no scope of any reversion upon the death of a Muslim woman because it devolves upon her own heirs and not on those of her husband. The Islamic law of inheritance, like the rest of the Islamic personal law, is a combination of pre-Islamic customs and rules introduced by the Prophet. It can be said that there is dual basis for the Muslim law of inheritance:

1. Rules laid down in the Koran or traditions;
2. Customs and usages prevailing amongst the Arabs insofar as they have not been altered or abrogated by Koranic injunctions.

The Koran gives specific shares to certain individuals on humane consideration while the pre-Islamic customary law deals with the residue thus left and distributes it among the agnatic heirs and failing them to uterine heirs. The customary law alone can explain the reason why different classes of rights are given to the various relations, and why some, who might be supposed to be equally entitled to similar rights, are debarred from them. Thus, customs

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192 Tahir Mahmood (Dr.), The Muslim Law in India 243 (1980).
193 Tyabji, 820.
194 Fyzee, Outlines of Mohammadan Law 381 (1964).
and usages occupy a prominent place in the Muslim system, especially so in connection with the law of inheritance.¹⁹⁵ The Muslim law of inheritance which is uncodified makes no distinction between properties of deceased male or female. Some authors on Muslim law feel that the Muslim law of property and succession in India has been considerably influenced by the local concepts and institutions.¹⁹⁶

1. **Inheritance under Muslim law: Position of woman**

This topic may be discussed under two heads:

(i) **Pre-Islamic Rules**

The rules of the Pre-Islamic customary law may be summarized as under:

(a) the nearest male agnate(s) succeeded
(b) females and cognates were excluded
(c) descendants were preferred to ascendants and ascendants to collaterals.
(d) where the agnates were equally distant, the estate was divided *per capita*.

It is clear that the females were discriminated against, as they were virtually excluded from the inheritance.

(ii) **Principles of Islamic Law**

The main reforms introduced by Islamic law may be stated briefly as under:¹⁹⁷

(a) the husband and wife were made heirs of each other.
(b) females and cognates were made competent to inherit.
(c) parents and ascendants were given the right to inherit even when there were male descendants.

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¹⁹⁶ *Supra* note 192 at 243.
(d) as a general rule, a female is given one-half the share of the corresponding male relation’s share because of her lesser responsibilities and obligations in comparison with males.

2. **Rights of Females**: At present, under Muslim law males and females don't have equal rights over property. This is manifest when there are two heirs of opposite sex in the same degree, then the male heir takes two shares and the female heir takes only one share. Thus, a daughter does not, however, by reason of her sex, suffer from any disability to deal with her share of the property as she is the absolute owner/master of her inheritance. The same rule applies to a widow or a mother. There is no such thing as a widow's estate, as in Hindu law, or the disabilities of a wife, as under the older English common law.

3. **Hanafi Law of Inheritance**: Under the Hanafi law, the heirs of a deceased, male or female, fall under the following classes:

   (a) the Sharers
   (b) the Residuaries
   (c) the Distant kindred and
   (d) the State by escheat

(a) **The Sharers**: There are twelve sharers in number who are given specific shares. However, their shares are not permanently fixed as each heir may be affected by the presence of other sharers. Sometimes, a sharer may be totally excluded from inheritance. The sharers include Father, Grandfather, Husband, Wife, Mother, Grandmother, Daughter, Son’s Daughter how low so ever, Uterine

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199 Supra note 118 at 51.
200 The Hanafi School was founded by Abu Hanifa, the great Imam, in this native city Kufa, in 8th Century A.D., and is also called the Kufa School. In India, a sizeable population of Sunni Muslims is that of Hanafis and often, Sunni law is referred to as Hanafi law.
Brother, Uterine Sister, Full Sister, Consanguine Sister. There are as many as 8 female sharer who could inherit the property of a deceased Muslim.

(b) **The Residuaries**: There are certain sharer who are excluded from taking their specified shares, if a residuary of equal rank co-exists. In such a case they become residuaries. They are also called chronic residuaries.\(^{201}\) Residuaries take from the residue that is left after the sharer's claim is satisfied. If no sharer is present then the entire property will be taken by the residuaries and so long as a single residuary is present the property does not go to the third category heirs namely 'Distant kindred'. The shares of residuaries are not fixed and its quantum is dependent upon the residue left in each case.

I. Descendants viz. (1) Son (2) Son's son how low so ever

II. Ascendants viz. (3 Father (4) Grandfather how high so ever.

III. Descendants of Father viz. (5) Full Brother (6) Full Sister (7) Consanguine brothers (8) Consanguine Sisters (9) Full Brother's Son (10) Consanguine Brother's Son (11) Full Brother's Son's Son (12) Consanguine Brother's Son's Son


It may be noted that, in all, only four females are included among the Residuaries in the form of Full sister, Consanguine sister, the daughter and the son's daughter how low so ever. No other female can inherit as a residuary. All the four females inherit as residuaries

\(^{201}\) Supra note 198.
with corresponding males of a parallel grade. Of the five heirs that are always entitled to some share of the inheritance and who are not liable to exclusion in any case viz. (1) the child i.e., son or daughter (2) father (3) mother (4) husband (5) wife, there could be three females in the form of mother, daughter and wife.

(c) **Distant Kindred**: In the absence of Sharers and Residuaries, the inheritance is divided among ‘distant kindred’ which consists of four classes viz. the Descendants of the deceased, ascendants of the deceased descendants of parents and descendants of immediate grand parents. There are number of females in all these four classes, who are remotely related to the deceased. The first of the class exclude the second and the second excludes the third and so on.

4. **Shia Law of Inheritance**: The Shias divide heirs into two groups:

   (i) heirs by consanguinity i.e. blood relations and
   (ii) heirs by affinity, related by marriage i.e. husband and wife.

   Among the blood relations mother, daughter, sister, grandmother, paternal aunt and maternal aunt are the females who are entitled to inherit the property of the deceased. They are called sharers. They take different shares depending on certain conditions like existence of other sharers and relatives. However, it may be noted that wife takes normally 1/8th share in the property of the husband but the husband takes 1/4th share in the property of the wife i.e. double the share of the wife in similar circumstances. Among the Shias, there is no separate class of heirs corresponding to the Distant kindred of Sunni law.

   **Discrimination**: Even though the protagonists of the Muslim law claim that there is absolute equality among the women and men in

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202 The Shia law changed the pre-Islamic law by altogether abolishing the differences between agnates and cognates as also males and females.
the matter of succession, there are certain provisions which are loaded in favour of the male inheritors as they take more shares, compared to their female counterparts. For example, among the Shias, a childless widow takes no share in her husband's land but she is entitled to have $1/4$th share in the value of trees and buildings standing thereon, as well as in his movable property.\textsuperscript{203}

**CHRISTIAN LAW**

The entire Christian law of succession is codified and governed by the Indian Succession Act, 1925. The Act regulates the intestate as well as testamentary succession among the Christians and also others. But it is important to point out that the Travancore Christian Succession Act and the Cochin Christian Succession Act, being the law for the time being in force, in the respective localities are saved by Section 29(2) of the Indian Succession Act. Therefore, in the matter of intestate succession Christian of Travancore and Cochin are governed by their own succession laws.\textsuperscript{204} The Act of 1925 provides that by marriage a woman acquires the domicile of her husband if she had not the same domicile before and a wife's domicile during marriage follows the domicile of her husband.\textsuperscript{205} In Section 20 of this Act, it is clearly stated that no person shall, by marriage, acquire any interest in the property of the person whom he or she married or becomes incapable of doing any act in respect of his or her own property which he or she could have done if unmarried. It also deals with the rights of a widow to inherit the property of her intestate husband. If the intestate has left the widow and lineal descendents, one third of his property shall belong to his widow and the remaining two third shall go to his lineal descendants but if he has left persons who are of kindred to him $1/2$ of his property shall belong to his widow and the

\textsuperscript{203} Supra note 198 at 98.
\textsuperscript{204} Supra note 114 at 374.
\textsuperscript{205} Sections 15 and 16 of the Indian Succession Act, 1925.
other half to his kindred. If he has left none but his widow, the whole property shall belong to his widow.\textsuperscript{206}

Under this Act, there is no discrimination between sons and daughters with regard to the distribution of the intestate father's property. The intestate's property (after deducting the widow's share) is shared equally among his children. In case the intestate has no lineal descendants and if father is dead, his mother and sister also are entitled to inherit his property.\textsuperscript{207}

In the area of Travancore State, the Travancore Succession Act, 1916 governs the majority of the Christians in the State but this law is not applicable to the Christians in Neyyathinkara who follow the Marumakkathayam law. The Act is also not applicable in its entirety to certain Latin Catholic Christians and protestant Christians living in Trivendrum and Quilon Districts. Similarly, the Cochin Christian Succession Act, 1921 is applicable to the Christians in the former Cochin State except in the case of the Tamil Christians in Chittoor who follow the Hindu law and the Anglo-Indian and the Parangi Communities.

In other parts of the State of Kerala, the Indian Succession Act, 1925 is made applicable. In fact, there is no substantial difference between the provisions of the Travancore and Cochin Succession Acts. In both these enactments the status of women is inferior to that of men. There is evident and unjustifiable discrimination against women. This feature has in effect, degraded these enactments as the most outdated pieces of legislation which needs thorough and drastic change. Mere modification is not sufficient but a fundamental change is called for. The Travancore Act, recognise the widow as one of the heirs of her husband with a share equal to that of a son if there is a

\begin{thebibliography}{10}
\bibitem{travancore} Section 33, \textit{ibid.}
\bibitem{cochin} Section 44, \textit{ibid.}
\end{thebibliography}

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son or the lineal descendants of a son left by intestate and equal to that of a daughter, when there are only daughters.\textsuperscript{208} She gets $\frac{1}{2}$ of the estate when there are no lineal descendants of the intestate, who leaves only his father, mother, paternal grandfather or the lineal descendants of his father or paternal grand-father. If there are none of these kindred left by the intestate the widow gets the whole of the estate.\textsuperscript{209} The widow's rights in the estate of her husband are only a life interest, terminable by death or remarriage.\textsuperscript{210} In the absence of father, or lineal descendants the mother of the intestate is also entitled to share equal to that of a brother.

The most controversial feature of the Travancore Christian Succession Act, 1916 and Cochin Christian Succession Act, 1921 relate to the rights of a daughter to the property of her intestate parents. Under Section 28 of the Travancore Act the sons and their lineal descendants shall be entitled to have the whole of the intestate's property subject to the claim of the daughter for Streedhanam fixed at one fourth of the value of the share of a son or Rs. 5,000/- whichever is less. Any Streedhanam promised but not paid shall be a charge upon the intestate property. The definitions\textsuperscript{211} of Streedhanam given in these Acts take it outside the ambit of the Prohibition of Dowry Act, 1961, according to which it is any property or valuable security given or agreed to be given at or before or any time after the marriage in connection with the marriage of the said parties.\textsuperscript{212} The Cochin Act

\textsuperscript{208} Section 16 the Travancore Succession Act, 1916.
\textsuperscript{209} Section 17-18, \textit{ibid}.
\textsuperscript{210} Section 24, \textit{ibid}.
\textsuperscript{211} Section 5 of the Travancore Christian Succession Act, 1916 defines ‘Streedhanam’ thus: ‘Streedhanam means and includes any money or ornaments, or, in lieu of money or ornaments any property, movable or immovable, given to or promised to be given to a female or, on her behalf, or her husband or to his parent or guardian by her father or mother, or after the death of either or both of them by anyone who claims under such father or mother, in satisfaction of her claim against the estate of the father or mother.’ According to Section 3 of the Cochin Christian Succession Act, 1921, “Streedhanam means any property given to a woman, or in trust for her to her husband, his parent, or guardian in connection with her marriage, and in fulfilment of a term of the marriage treaty in that behalf.”
\textsuperscript{212} Section 2 of the Dowry Prohibition Act, 1961.
gives the daughter a share along with the sons, subject to the limitation that her share shall be one-third in value of that of a son. On the whole the position of the Christian women is not so unhappy as was the case of Hindu women prior to the Act of 1956. The lineal descendants and the kindred also consist of many female heirs who take their shares in the property of the intestate as per the Rules of distribution contained in Sections 36 to 49 of the Indian Succession Act, 1925. The widow is made to share the property along with the other relatives of the husband in certain cases. Now it is high time for the Christians of Travancore and Cochin to see that immediate and necessary legislations are undertaken to provide equal shares to daughters along with sons in the property of their intestate parents.

PARSI LAW

Like the Hindu and Muslim law there are separate rules for the distribution of the assets of a male and a female. The son’s share of his father’s property is twice that of a daughter, the widow gets only as much as any of her sons. If the intestate’s parents survive him, then the father gets half the share of the son – that is the same as the daughter. But the mother gets only half the share of the daughter. The Parsi mother is in a worse position than the Hindu Mother who, under the Hindu Succession Act, 1956 gets a share equal to that of the widow and the children. When a Parsi woman dies intestate, leaving her husband and children, the property is divided equally among the widower and children. Thus, while the son is entitled to an equal share of the mother’s property along with the daughter, the daughter is not entitled to the same right when she inherits the property of her father. Mothers and daughters then are the worst sufferers in this community. A Parsi woman is afforded no protection against arbitrary decision either – for where as in Muslim law a father

213 Section 20 (b) of Cochin Christian Succession Act, 1921.
cannot disinherit his wife or daughter, he can only will away one eighth of his property according to his wishes. A Parsi male is not bound by any such restriction.\textsuperscript{214}

Women are discriminated against even in the final application of such unsatisfactory laws. In India, Parsi law applies to three categories of Zoroastrians persons de-seconded from the original persian emigrants, born of Zoroastrian parents; children of Parsi fathers by non-Parsi women who have been admitted to the Zoroastrian religion; and finally Zoroastrians from Iran permanently or temporarily residing in India. Children of Parsi women married to non-Parsi have no rights, as under Parsi law they are not considered Parsi. There is no satisfying explanation for such gross bias. Priests, Scholars and lay people, all that they can offer are unscientific conjectures about the superior hereditary genes of the male and the like. The only justification, given for such definitions when it was held by the Bombay High Court in 1909 in the case of \textit{Sir Dinshaw M. Petit v. Sir Jamesetji Jijibhai},\textsuperscript{215} over the right of a non-Parsi woman to enter the faith of her Parsi husband. It was assumed that a woman would have to accept the religious faith of her husband. In other words a Parsi woman who marries a non-Parsi would have to follow her husband's faith and bring up her children according to his wishes. The definition itself was arrived at with little debate, by an order of court. At the root of such discrimination it lays the Parsi's fear of losing their distinctive ethnic identity. For their's is a race which has survived in this country since the seventh century and whose religion was established 1300 years before Christianity. At present, however, they run the risk of extinction. Parsi personal law is also based on Hindu custom and the rules of English common law. The first Parsi

\begin{thebibliography}{9}
\bibitem{214} Supra note 133 at 377.
\bibitem{215} AIR 1909 Bom 31.
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migrants were allowed to stay in the kingdom of Jadi Rano on the west coast of India on the strict condition that they would adopt the language and some of customs of the State and that they would not convert these people to their faith. Being so ancient, there is little documentation of the legal system governing the Parsis when they first landed in India. But they took on Hindu customs and institutions like the panchyat for administration of their affairs. Priests had the final say in all religious matters. With the colonization of the country by the British, the Supreme Court of Judicature said in 1773 that Muslims should be governed by Muslim law, Hindus by the Shastras and smaller communities like the Parsis should be governed by English civil law, as it was assumed that the latter’s laws had no religious identity. This however, applied only to the three Presidency towns of Bombay, Calcutta and Madras. Elsewhere the Diwani Adalats established by Warren Hastings in 1772 as the highest civil courts of the districts, continued to apply the personal laws of every community in matters of inheritance, marriage and religion on the basis of “Justice and Equity”.

This sort of quality raised the expected problems, and women suffered in both town and country. In the Presidency towns the English statute of distribution meant the Parsi widows got just one third of the estate and the residue was divided equally among the children and their descendants. The English common law rules prevailing at the time meant the married women had no right to hold or dispose of any property during overture. The mofussil Parsis, following Hindu custom, excluded Parsi women from a share in the estate of the male. They were given only rights to maintenance and adoption. This state of affairs continued till a prospective male heir challenged the testamentary powers of property disposal by a Parsi father, which according to the English statute of Mortmain allowed the
latter, if he so desired, to donate his entire property to charity. Finally, in 1955 after much discussion, a Parsi Law Association was formed to make a thorough study of Parsi custom and put forward legislative proposals. Two statutes were enacted namely, the Parsi Marriage and Divorce Act, 1936 and the Parsi Intestate Succession Act, 1936. The Succession Act was re-enacted in Chapter II, Part V, of the Indian Succession Act, 1925, and finally modified by an Amendment Act in 1939. There were not women on any of the panel which made the legislative recommendations. In fact, the final statutes were enacted by a Parsi Law Commission headed by an English Judge\textsuperscript{216} of the Bombay High Court. Whereas in 1939 these rules conferred better rights to women than existing Hindu and Muslim law, with the passage of time they have gone out of step with progressive social trends. Why educated, outwardly emancipated Parsi women tolerate such inequity is hard to comprehend? Many of course were ignorant of the law until it actually applied to them. In the smaller towns of Gujarat, for instance, even today there have been recorded instances of Parsi women being deprived of their legitimate share in the estate of their fathers and husbands. They have accepted all simply because they do not know that the laws have changed now.\textsuperscript{217}

**GOVERNMENT PLANS, SCHEMES AND PROGRAMMES FOR EMANCIPATION OF WOMEN**

After attaining independence, the Government of India, initially decided to pave a path to bring about social change based on three major areas, viz., Planned development, Constitutional and legal reforms based on mixed economy and state support to social welfare activities. All these three policies are expected to create a democratic,
just and prosperous society. These entire three steps have their impact on the status of women. The Government in different plan documents enunciated the policies advocating women’s issues. Planned development was considered to be the most efficient ways for solving the numerous problems of economic discrimination among vast numbers of people. These plans are as under: A planned approach to provide special thrust to the welfare of women was adopted with the launching of the First Five Year Plan in 1951. The First Five Year Plans contemplated welfare measures for women. The Second Five Year Plan intimately concentrated on overall intensive agricultural development. It suggested immediate implementation of the principal of equal pay for equal work and provision for training to enable women to compete for higher jobs. The Third Five Year Plan sincerely recognized the greater importance of education for women which has been a major welfare strategy for women. The emphasis on women education was continued during the Fourth Five Year Plan also. The basic policy was to promote women’s welfare as the base of operation. In Fifth Five year plan, there was shift in the approach from ‘welfare to development’ the new approach integrated welfare with developmental services. The Sixth Five Year Plan adopted a ‘multi-disciplinary approach’ with thrust on health, education and employment. In the Seventh Plan, development programmes for women were continued, with the objective of raising their economic and social status by beneficiary oriented programmes, which extended direct benefits to women. The Eight Five Year Plan was a definite shift from ‘development to empowerment’ of women.

219 (1951-56)
220 (1956-61)
221 (1961-66)
222 (1969-1974)
224 Supra note 50 at 135.
The strategy in the Eighth Plan was to ensure that the benefits of development from different sectors did not bypass women and special programmes were implemented to complement the general programmes. In Ninth Five Year Plan, an approach paper had been developed by the Planning Commission and accepted by the National Development Council, which focused on empowerment of women and people’s participation in planning and implementation of strategies. The Tenth Plan aims of empowering women through translating the adopted National Policy for Empowerment of Women (2001) into action and ensuring 'survival' protection and development of children through rights based approach. The Eleventh Plan Approach paper aimed to raise the sex ration for the age group 0-6 to 935 by 2011-12 and to 950 by 2016-17. Further, this plan intends to ensure that 33 percent of the direct and indirect beneficiaries of all government schemes are women and girl children. The twelfth Five Year Plan recommends to create safe, supportive and responsive environment for the economic empowerment of woman. The purpose of this plan is to provide joint land titles to women, in all government land transfers.

**Schemes to Raise the Status of Women**

As the benefits of social and economic development have not percolated down particularly to rural women, the Ministries of Agriculture, Rural Development, Industry, Labour, Science and Technology and the Department of Women and Child Development had made specific schemes for enhancing the women's social and economic development.

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225 The Ninth Five Year Plan came into effect from April 1, 1997.
227 (2007-2012)
228 Available at http://Planningcommission.nic.in (visited on 10-12-2010).
229 (2012-17)
The Government's biggest effort to give employment to women has been in the rural development sector. Common Programmes like Integrated Rural Development Programme (IRDP), Programme for Training of Rural Youth for self Employment (TRYSEM), National Rural Employment Programme (NREP) and Rural Labour Employment Guarantee Programme (RLEGP), Employment Assurance Scheme (EAS), have been envisaged for increasing participation of women in wage employment and creation of assets specific to the needs of women's group.

The Indira Awas Yojana initiated in 1985-86 stipulates that houses under the scheme are to be allotted in the name of the female member of the beneficiary household or in the Joint names of husband and wife. National Maturity Benefit Scheme, the Swaran-Jayanti Gram Swarozgar Yojana, Land Purchase Scheme Self-Employment Scheme are also a few more schemes to bring the overall status of women at par with that of men.

Programmes for Women's Development

For the social and economic upliftment and development, the Department of Women and Child Development has taken significant initiatives by making specific programmes for enhancing women's employment and for social and economic uplift and empowerment. The followings are the important women oriented programmes being implemented by the Department of Women and Child Development.

1) **Working Women Hostel**\(^{230}\) : This is the Scheme of assistance for Construction of hostel building for working women with day care centres for children.

2) **Sawalamban (NURAD)**\(^{231}\) : This programme provided training to women in 35 identified skills.

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\(^{230}\) This Scheme was started in 1972-73 as a Central Sector Plan Scheme.

\(^{231}\) This Programme was started in 1982-83 in India with Norwegian assistance.
3) **Family Counseling Centres**: The prime aim of this Scheme, implemented through Central Social Welfare Board, is to make a provision of counseling and rehabilitative services to women victims of atrocities and disputes in the family and the society.

4) **Rashtriya Mahila Kosh**\(^{232}\) : The main aim of this institution is to facilitate credit support to poor women for their socio-economic upliftment.

5) **Balika Samridhi Yojana**\(^{233}\) : The foremost focus of this scheme is to bring about attitudinal changes in the family and society towards the girl child, so that overall status of girl child may be raised.

6) **Short Stay Homes**\(^{234}\) : This Scheme was aimed to protect and rehabilitate those women and girls who are facing social, economic and emotional problems due to family stress, social criticism, moral danger, etc.

7) **Swayamsiddha** : The immediate objective of the scheme launched in 2001 earlier known as Indira Mahila Yojana, is to establish self reliant women self help groups for creation of confidence and awareness among the members of self help groups, strengthening and institutionalizing saving habits among rural women.

8) **Swa-Shakti**\(^{235}\) : The chief objective is to enhance women's access to resources to improve quality of life and confidence enhancement by increasing their control over income through their involvement in still development and income generation. This project is implemented in India through State Women's Development Corporations and Similar bodies.

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232 This Institution was set up on 30th March 1993 under Societies Registration Act, 1860.
233 This Scheme was launched in October 1997.
234 This Scheme was implemented in India through the Central Social Welfare Board.
235 It is a rural women development and empowerment project supported jointly by the World Bank and the International fund for Agricultural Development.
9) **National Policy on Empowerment of Women**\(^{236}\): The primary aim is to bring about the advancement, development and empowerment of women and to remove all kinds of discrimination against women and to ensure their active participation in all spheres of life and activities.

10) **Women's Component Plan**: The major aim of this scheme is to ensure that in all women related sectors not less than 30 percent funds are earmarked for women.

11) **Swayamsidha**\(^{237}\): This was an integrated scheme for women empowerment through formation of Self Help Groups. The main objectives of the scheme are to train women in economic activity to uplift the economic and social status of women and to help them increase their income and create awareness about welfare schemes for women.

12) **Mahila Jagriti Yojana**\(^{238}\): This scheme was started to generate awareness among women by disseminating information and knowledge in order to bring about an attitudinal change.

**Growth of Women's Organisations**

Although Government at Centre and State levels have made several efforts to raise the status of women but there are also some women's organizations like the Banga Mahila Samaj and Ladies Theosophical Society functioning at local levels to promote modern ideas for women, but the pioneering work was done by those organisations which functioned on a national basis. These five important national organisations were: Bharat Mahila Parishad\(^{239}\), Bharat Stri Mahamandal\(^{240}\), Women's Indian Association\(^{241}\), National

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\(^{236}\) This policy was adopted by the Government on March 20, 2001. The year 2001 was celebrated as "Women Empowerment Year".

\(^{237}\) This is a centrally sponsored Scheme earlier known as Indira Mahila Yojana launched in 1995-96 only in Faridkot and Mukatsar districts of Punjab, launched in February, 2001.

\(^{238}\) This Scheme was launched in Punjab State on March 8, 1999 on International Women's Day.

\(^{239}\) Started in 1904 with the main aim to struggle for the emancipation of women.

\(^{240}\) Founded in 1910.

\(^{241}\) Started in 1917 by Annie Besant.
Council of Women in India\textsuperscript{242}, and All India Women's Conference.\textsuperscript{243} Kasturba Gandhi National Memorial Trust was started after the death of Kasturba Gandhi. These organizations take up issues like women's education, abolition of social evils.\textsuperscript{244} Hindu law reform, moral and material progress of women, equality of rights and opportunities and women's suffrage.

It is evident clear from the foregoing discussion that under the Hindu law in operation prior to the coming into force of the Hindu Succession Act, 1956, a woman's ownership of property was hedged by certain limitations. Although much legislation was passed to improve the status of women and some property rights directly and indirectly given to the Hindu women, but these were not enough to solve this problems. This is particularly true when attempts to improve the status of women are made through incremental reforms that are not grounded in an understanding of how women's oppressions are construed. Personal laws are such branches of law where women's position need to be changed because these laws are patriarchal in nature and grants more rights to men in comparison to women rather it would be appropriate to say that it gives women a secondary place.

Although the process of removing inequality started way back with the dawn of independence with the codification of Hindu law. The introduction of the extensive reforms in personal law of Hindus, the majority community, was one of the foremost tasks taken up by the political leaders of the independent Indian State and through the codification of the Hindu Succession Act, 1956 they provided the property rights to the Hindu women as a heir of male intestate and this Act also provides the absolute ownership of the property to women.

\textsuperscript{242} Founded in 1925 by Lady Aberden and Lady Jata.
\textsuperscript{243} Established in 1927 through the efforts of Margaret Cousins and Others.
\textsuperscript{244} Such as purdah and child marriage