CHAPTER - I

WOMEN AND HUMAN RIGHTS:
RETROSPECT AND PROSPECT
1.1. INTRODUCTION:

"Man and Women are equal in status..... They are peerless pair being complementary to one another.... Without the one, the existence of the other cannot be conceived......"n Mahatma Gandhi.

All human beings are born free and equal in dignity and rights. The inherent dignity of all members of the human family is the foundation of freedom and justice and peace in the world. Human rights are the moral claims which are inalienable and inherent in all human individuals. These are the rights which are possessed by every human being irrespective of his or her nationality, race, religion, sex etc. simply because he or she is a human being. Man and women are born equal and both play vital roles in the creation and development of their families in particular and the society in general. She is spiritual and direct agent of life forces and if the foundation is not properly maintained, the whole building of the human life is bound to crackdown and dismember. Women are the pivot around which the family, the society and humanity itself revolves. Human Rights are not worthy of the name, if they exclude the female half of humanity. The struggle for women's equality is part of the struggle for a better world for all human beings and all societies.

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1: Quoted in the paper of G.B.K. Hooja : "The New Education Policy and Women's Development" Published in "Women in India" by Dr.(Mrs.) L. Devasia and Dr. V. V. Devasia, Ed. 1990, P.108.
Women constitute half the humanity. Despite being endowed with certain peculiar features – both physical and temperamental, men and women are complementary to each other. The Indian concept of Ardhanarishwar very well depicts this view. The ‘Nirakar Brahma’ when willing to create the universe, assumes a ‘Nar’, while the other half is the female the ‘Nari’. Together these two components make a complete body. Though one and inseparable in ultimate sense, Ardhanarishwara divides himself / herself in the form of Adipurush (male) and Prakriti (female) the task without the involvement of the other. The significance of this view lies in its message that the male and female are the equal partners in the creation, development and progress of the society, both should be given equal importance and opportunities and should be treated equally. Unfortunately, women everywhere in the world have been subjected to various injustices.

Since time immemorial, women have remained confined within the four walls of the home and treated as ‘the second sex’. They did not have any voice in decision making in the family. Household was a women's complete world. Her highest accomplishment was in providing supportive roles to the male members in the family. The roots of discrimination are in the mind of men. Women are looked upon as inferior sex. They are treated as property or possession of man with no individual identity; a weaker sex incapable of protecting herself. They are supposed to be fit only for reproductive and domestic roles and not for ones involving power and decision making. An ideal women is supposed to be one who is self-effacing, self-sacrificing,
submissive and meek. Women are not allowed equal access to the freedom of faith and religion, freedom of movement and residence. Rights to equality of opportunity, either de jure or de facto is missing for them in many parts of the world. Millions of women are in low pay, low status and in low ranks with no prospect for promotion, pension and old-age security. From womb to tomb, a women is under the constant fear of violence. She may be subjected to it at any place – in the streets, hospitals, trains, buses, work place, police stations, educational institutions and within the safe confines of home and even within the womb of her mother in the form of female foeticide. It is really unfortunate that world's 960 million illiterate adults are women. Similarly, of the estimated 130 million children aged six to eleven, who are out of school, 73 millions are girls. This century has been termed as the age of democracy. However, democracy has made entry only into the political field. Social democracy is still a mirage. For millions of world's women, democratic values – equality, liberty, justice and fraternity have no meaning. Neglect of half of the humanity is bound to have a crippling impact in the progress of human civilization. Equal guarantee of all human rights is vital not only for women's own development but also for the development of the whole society. Though discrimination on any ground is discordant with the spirit of human rights, gender discrimination is the worst of all since it is against that human being who is the most intimate partner of man and from whom he gets love, support and strength all through his life. As a mother, a wife, a daughter and a sister, her love, devotion, sacrifice and service is unparalleled. Once Mahatma Gandhi ob-
served that" of all the evils for which man has made himself responsible, none is so degrading, so shocking or so brutal as his abuse of the better half of humanity".

1.1. The United Nations and the Human Rights of Women :

The United Nations is committed to the principle of equality of men and women, meaning the equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire United Nations system had dedicated itself to ensuring the universal recognition, in law, of equality of rights between men and women, and to exploring ways to give women, in fact, equal opportunities with men to realize their human rights and fundamental freedoms.

UN actions for the advancement of women began with the signing of the UN's Charter. In its preamble, the members of the UN declared their faith" in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". This happened sixty years ago, in October 1945, when the Charter entered into force and the UN was formally set up. Since then, the UN has been as the centre of a growing global movement for women's rights. By adopting international laws and treaties on women's rights, the UN has helped to set a common standard for measuring how societies advance equality between men and women.
The Charter of the United Nations is the first international instrument to mention equal rights of men and women in specific terms. One of the purposes of the UN, as set out in Article-I, is "to achieve international cooperation in solving international problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Article 8 states that "the United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs".

Articles 13, 55, and 76 of the UN Charter call for the realisation of human rights and fundamental freedoms "for all without distinction as to race, sex, language or religion." Under Art. 56, Member states have pledged themselves, to take joint and separate action in co-operation with the United Nations to achieve such aims. This basic principle of equality is elaborated in the Universal Declaration of Human Rights, which declares that, all human beings are born free and equal in dignity and rights, and that everyone is entitled to all the rights and freedoms set forth in the declaration without distinction of any kind, including distinction based on sex. The principle of equality of men and women and the prohibition of discrimination against women are clearly set out in both the International Covenants of Human Rights. Under the International Covenant of Civil and Political Rights the State Parties undertake to respect and to ensure to all individuals within its
territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind. It further states in Art.3 that "the State Parties to the present covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present covenant." The International Covenant on Economic, Social and Cultural Rights states that "The State Parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind". Under Art.3, the State Parties undertake "to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant." These principles are also at the heart of many UN instruments which deal with particular rights of women.

In 1979, the principle of non-discrimination on the basis of sex, as well as other women rights, became the object of a specific treaty – The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The object of this Convention is to implement equality between men and women and to prevent discrimination against women, in particular such specific forms of discrimination as forced marriages, domestic violence and less access to education, health care and public life as well as discrimination at work. Article I of the Convention defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men & women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” State Parties to the Convention are bound to take all the necessary legislative, judicial, administrative or other appropriate measures to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality of men.

But, inspite of all these, women's freedom, dignity and equality are constantly denied all over the world on the basis of custom, tradition, culture and religion. Advances in the recognition of this factor and women's advocacy to establish that women are indeed human and therefore entitled to the enjoyments of rights accorded to all 'human being' has a long history that encompasses almost a century of struggle. The struggle has been waged through an interactive process that derived its impetus from the women's
movement nationally and globally. It involved governments and international organisations and created a local and international dynamism that informed each often. In an attempt to address the inequalities and disadvantage suffered by women, several interventions were put in place at the international level. Over the years, there have been overlapping and interactive developments. During the first stage of development, specific legal rights of particular concern to women were promoted through specialised conventions relating to employment, maternity, trafficking in persons, nationality, civil and political rights, marriage, education and violence against women to which states at the local level contributed by acceding to them. During the second stage of development states succeeded in such agreements as the Universal Declaration of Human Rights and its two implementing covenants.

The third stage of development addresses the pervasive and structural stature of violations of women's rights, through the Convention on the Elimination of All Forms of Discrimination Against Women.

In the last two decades in particular, many other global initiatives had been taken to promote women's rights. They include the declaration of the decade for women (1975-1985), four world conferences on women, the adoption by consensus of the Nairobi Forward Looking Strategies (1985) and the Beijing Declaration and Platform for Action (1995). Other world conferences, in particular the Vienna Conference on Human Rights and the Inter-

national Conference on Population and Development have advanced the understanding and global commitment to women's rights.

The Fourth World Conference on Women at Beijing very strongly highlighted the fact that throughout the world there has been traditionally discrimination against women. Discrimination against women takes three main forms; (1) Discrimination in Economic, Political and Social Opportunities, (2) Inequality in family life including health care, marriage and in reproductive decision making and (3) gender based violence ranging from violence in the community by the state and by armed conflicts. Such discrimination has resulted in an obvious denial of a women's basic human rights.

A women has a right to lead her life with dignity and without humiliations. She has a right to live free from violence. She has a right to education and information. Unless a women's right to lead a life with dignity, her right to education, health care, her right to have a control over reproduction and her own body, her right to participate in the economic and political processes get recognition and respect, a women can not be empowered to lead a fulfilling life or to contribute to the progress of the nation. Empowerment of women and enforcement of women's human rights are insepara-

5. The International Convention on the Elimination of all Forms of Discrimination against Women has stated that discrimination against women "Violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women on equal terms with men in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in service of their countries and of humanity".
bly linked. Empowerment of women thus depends on elimination of discrimination and respect for the economic, cultural, social as also civil and political rights - in short, their Human Rights.

Thus, equality is both a goal and a means whereby individuals are accorded equal treatment under the law and equal opportunities to enjoy their rights and to develop their potential and talents and skills so that they can participate in national, political, economic, social & cultural development and can benefit from its results. For women in particular, equality means the realisation of rights that they have been denied as a result of cultural, institutional, behavioural or attitudinal discrimination.

Since equality is important for overall development and peace, these strategies are broadly aimed at integrating the human rights of women into all the UN activities as well as creating special mechanism to deal with violations of those rights specifically concerning women. The Vienna Declaration and Programme of Action (1993) called for increased integration of women's rights into the UN human rights system. It furthermore included the need to recognise the particularity of women's rights and the development of means to implement them, including the more vigorous implementation of the Convention on the Elimination of All Forms of Discrimination Against Women. In a follow up to the Vienna Declaration, the Commission of Human Rights passed a resolution at its fiftieth session calling for intensified efforts at the international level to integrate the equal status of women and the human rights of women into the mainstream of UN systemwide activity.
The further step towards the elimination of violence against women is the Declaration on the Elimination of Violence Against Women, adopted by the UN General Assembly in 1993. It calls on all states to take measures to prevent and punish violence against women, with the mandate to examine the causes and consequences of violence against women. The fourth world conference on women, which took place in Beijing, China, confirmed the importance of actions in order to ensure the advancement of women including their full incorporation into the development process, improvement of their status in society and greater opportunities for education. One of the highest achievements of the world conference was that the message “Women’s rights are human rights” was acknowledged.

The biggest success of the UN human rights system is the acceptance by all governments of the international community's power to scrutinize the observance of human rights. Virtually every country is a party to some international human rights treaty which entails the obligation of reporting, hence its human rights performance is subject to international supervision.

1.2. STATUS OF WOMEN IN INDIA – PAST AND PRESENT:

"That society would highly be developed and prosperous where women have their rightful place" (Manu). The status of women varies from one

6. The Fourth World Conference on Women was held at Beijing in 1995. The Platform for Action at the Beijing Conference addressed 11 substantive areas of concern, poverty, education, health, violence, armed conflict, economic structures and policies, decision making, mechanisms for the achievements of women, women's human rights, media and environment.
part of the world to another. ‘Status’ is a relative term. In sociological expression, it denotes neither rank nor hierarchy but only position vis-a-vis others in terms of rights and obligation. In legal parlance, “status denotes the collectivity of rights and obligations which appertain to a conjunction of positions a women occupies...... as a worker, student, wife, mother..........the power and prestige attached to these positions and the rights and duties she is expected to exercise.

Women's status can then be analysed in terms of their participation in decision making, access to opportunities, in education, training, employment and income.

The question of the status of Indian woman can not be properly understood without reference to the predecessor form of Indian womanhood from which it evolved and the process by which it grew. That is to say, a glimpse of past status is essential for understanding the contemporary status of women in India.

1.2.1. WOMAN IN THE VEDIC PERIOD:

Hindu tradition have generally respected womanhood. In the ancient India, woman held a high place of respect in the society as mentioned in the Indian scriptures. The history of ancient India may be said to commence from the period during which the Rig Veda was composed. Vedic literature

which is the prime source of all cultural manifestations in India depicts a vivid picture of ancient Indian womanhood.

Hindu traditions have generally respected womanhood, though occasionally we find derogatory references to women. The history of ancient India may be said to commence from the period during which the Rig Veda was composed. In the Rig Veda we find a great literary monument of hoary antiquity, containing a code of ethical life reflecting the thoughts and aspirations of the people. Vedic literature which is the prime source of all cultural manifestations in India depicts a vivid picture of ancient Indian womanhood. The Vedic society was a patriarchal one, and hence father was the head of the family. During the period we find that prayers were uttered for the birth of a son, though we do not come across any reference deprecating the birth of a daughter as in Atharva Veda. We find in the Rig Veda a number of names to denote a girl at different stages of her life. A girl is variously called *kanya, duhita, kallmakan, kullyalla, kaliya/a, putrik* etc. Of all these epithets for girls, the word 'duhita' seems to have been in frequent use in the Rig Veda, referring to a daughter.

The form of marriage that was widely prevalent during this period was monogamy, though there were some references to polygamy. Rituals formed a part in the Vedic marriage. Woman as wife is denoted by the words *Jaya, Jani* and *Pami*, each denoting special characteristics of wifehood. *Jaya* means the sharer of the husband’s affections; *Jani*, the mother of children; and *Pami*, the partner in the observance and performance of religious sacrifices.
Besides these, some references clearly go to show that the household fire was tended by the husband and wife together.

With regard to education of women during this period, it may be noted briefly that the position of women was generally not unequal to that of the men. The proof of this is the fact that the Rig Veda contains hymns (suktas) by as many as twenty-seven women, called brahmavadinis or women seers. Saunaka in his Brihaddevata, a work on the Rig Veda, has stated the names of these twenty-seven women seers. During this age domestic life was not in any way inconsistent with spiritual life. The highest traits of a brahmavadini and a sadyovaadhu are exemplified in the famous hymns of Vac and Surya respectively. This testifies to the fact that men and women were regarded as having equally important status in the social life of the early Vedic period. In the time of the Vedas, all writers are agreed that, she enjoyed much freedom and was clearly in most cases an equal of man.

The Rig Veda contains no clear evidence of divorce obtaining in actual practice, such an idea too was almost abominable. Marriage was considered sacred and divorce was against all occult and spiritual law. The society during this period set up a high order of morality. Hence, there were hardly any instances of adultery among married women. It is true that towards the close of Rig Vedic period, several restrictions were gradually imposed on the freedom and privileges which women enjoyed earlier. Several evils crept in and this ultimately led to the degradation of women in society. The early Rig Vedic age which saw the dawn of power and influence which the Indo-
Aryan woman wielded in her household, gradually deteriorated during the end of the period. Nevertheless, the picture of the ideal womanhood depicted in the lives and characters of such exalted women as Gargii, Maitreyi, Katyayani, Ghosha, Lopamudra, Sasvati, Apala, Indrani, etc., would ever remain as embodiments and personifications of all that is pure, noble and chaste in Indian Womanhood. That a husband and wife constituted an indivisible unit in society, and the duties of each towards the other, can be inferred from the nuptial hymn as depicted in the Atharva Vedic passages.

In summing up, it may be said that the status of women in early vedic society is a matter of some debate. While there had been a consistent tendency to idealise their position, it is likely that reality may have been more complex. We have references to women seers of vedic hymns, which would indicate some access to ritual and spiritual traditions. However, society appeared to have been organised partrilineally, and while there were prayers for the birth of sons in particular, there was nothing for the birth of a daughter. Further, most of the major deities in the early vedic pantheon are male, which would possibly indicate male domination on the human plane as well.9

1.2.2. THE DHARMASUTRA PERIOD:

With the advent of the Sutra period (600-300 B.C.) the deterioration in the status of woman began to appear gradually. The Veda was the Supreme

source of authority for all Dharmasutras which was considered a divine revelation. The commands and injunctions issued by Vedas were considered to have come by the supreme God. The earliest of the Smritikaras, the law-givers, Gautama declared Veda as the source of Dharma, so did Baudhayana and Apstambha. But Manu made a departure and mentioned Veda as one of the sources of Dharma. According to Manu, Veda is the first source, tradition is the second, and usages of the virtuous men the third source. Thus by passage of time, there was departure from strict observance of Veda in the name of tradition and usage.

In the Grihyasutras (700-300 B.C.) – the law of domestic ritual, sacraments (samskaras) were allowed to be performed in the case of woman also; but they were performed silently, i.e. without the Vedic mantras. The prohibition from access to the Vedas for woman had far-reaching consequences; the women were reduced to the status of a passive partner in religious rites.

The scope of the activities of a wife in the religious field was restricted: 'a wife is not independent with respect to the fulfilment of the sacred law'. Strict discipline in life and fidelity to her husband were demanded from a woman: 'Let her not violate her duty towards her husband', and 'let her restrain her tongue eyes and actions'.

The importance and necessity of a son increased for the continuity of the race and for the peace and happiness of the souls of the dead in the other world. Sons of any description were admitted in the society and inherited the property of their father: a legitimate son, a son begotten of the wife, an adopted son, a son made, a son born secretly, and a son abandoned, inherit the estate (of their father).

Like the Rig Veda, Gautama says: "a father who had no male issue may appoint his daughter. In the absence of any issue or even an appointed daughter, the Wife could inherit the property of her deceased husband". However, women could have separate property of their own which come to be designated in later Smriti digests as Stridhanam and such property was inherited by the unmarried daughters.

1.2.3 SMRITI PERIOD:

However, by the time of Manusmriti (200 B.C.) and Yajnavalkyasrtri, many of the earlier laws governing freedom to women got extinct, and what remained thereafter was the ascetic rigidity. Manusmriti is full of paradoxes of respect and neglect of woman. Manu keeps women in high esteem when he say that "women must always be honoured and respected by the father, brother, husband and brothers-in-law who desire their own welfare". And, "where women are honoured, there the very Gods are pleased (Naryastu Yatra Pujiyante, ramante tatra devata), but where they are not honoured, no sacred rite even could yield rewards". Had Manu
stopped here, perhaps, there could have been no better appreciation of women. But underneath such rhetoric there was a different motif.

The *Manusmriti* tended to lower woman's status and deprived her of her traditional status in a variety of ways. For Manu women were created by God to be mothers just as men were created to be fathers. So a maiden may be given in marriage, even though she has not attained the proper marriageable age. The *vivah* (marriage) of maidens should be done as soon as they attain marriageable age. If she stays in her father's home for more than three years after attaining puberty, she is called a *Vrishala* or a *Shudra*. i.e., very low type. Manu prescribed eight methods of consecrating a marriage union, six of which are lawful (*Brahma, Daiva, Arsha, Prajapatya, Gandharva* and *Rakshasha*) and the remaining two unlawful (*Asura* and *Paishacha*). All sorts of incest taboos were brought to bear. There was a complicated exogamic rule: *sagotra, sapinda* and *sapravara* marriages were prohibited, yet marriage was required to be contracted in one's own caste.

The ideal of wifehood in essence was the negation of her personality. The husband must constantly be worshipped as a god by a faithful wife (*Sadhvi*). Even if he be a destitute of character or seeking pleasures elsewhere or devoid of good qualities, a good wife desirous of living in this as well as the next world with her husband, must never do anything that would displease him either alive or dead. A woman attains paradise not by virtue of any austere penance but as a result of her obedience and devotion to her husband. Women have no sacrifices or fasts ordained for them. Neither they
are called upon to perform *araddhas*. To serve and worship their husbands with respect and obedience is their only duty. By the fulfilment of that duty alone they succeed in attaining heaven. Manu ordains that there are neither specific sacrifices for women independently of the husband, nor *vratas* (fasts) without her husband's consent.

Manu assigns the low status to woman and downgrades her to the extreme. Manu is not ashamed in saying that “Women must particularly be guarded against evil inclinations, however trifling they may appear to be; for, if they are not guarded, they will bring sorrow, on both the families. Considering it the highest duty of all castes even weak husbands must strive to guard their wives”.

It appears that Manu fears intimacy between persons of different *varnas* and intends to regulate sex intimacies on the patterns of social hierarchy embodied in the theory of *anuloma* and *pratiloma* marriages. Hence he prescribed rigid control over woman's behaviour and denigrates her sexual impulse: “women do not care for beauty, nor is their attention fixed on age: they give themselves to the handsome as well as to the ugly just for the fact that he is a man”. If she be chaste, it is because, she has not found a proper man, place or opportunity. Manu called woman *pramada*, a temptress. Woman was, according to Manu, created for infatuating man. In the wisdom of Manu, “It is the nature of women to seduce men in this world, for that reason the wise never remain unguarded in the company of female.”
At the educational plane the investiture of the sacred thread (upnayana), which initiated a person into the study of the Vedas came to be confined only to male children: the female was entitled only to one sacrament, namely marriage.

The preceding account of the status of woman in the Smriti period indicates that by the passage of time her status deteriorated. Smritikaras were having a contradictory attitude towards women. On the one hand, woman was kept in high esteem, but was denigrated on the other. She was allotted the domestic sphere of life. Her independence was snatched. She was deprived of education. The aspersions were cast on her character. Her position was inferior even to the man weak in character. The son of any description was higher in status in comparison to daughter. A woman was described by a multitude of derogatory attributes. She was called fickle-minded, sensual, seducer of men; given to falsehood, trickery, greedy impurity and thoughtless action; root of evil; inconsistent and cruel. For her, only sacrament was marriage. She was clubbed with Shudra and preordained to a low status in life.

The legal position of women, according to Manu, the earliest exponent of the law, was definitely unfortunate. They were always dependent on somebody either the father, or the husband, or the son.

पिता रक्षति कीमारे भला रक्षति छैवने ।
पुत्री रक्षति कार्यबेन रत्नी स्वातन्त्र्य महिति ।
("A woman is not entitled to independence; her father protects her in her maidenhood, her husband in her youth, and her son in her old age.")

Manu, IX, 3.

Almost they were treated in law as chattels and a non-entity in the family.

\[\text{मध्यां पुत्रश्व त्रय एवाध्यना: स्मृताः।}
\text{वत् ते समयवचन्तः वस्येते तत्स्य नद्दचन्।}
\]
- Manu : viii, 416.

(A wife, a son, and a slave, these three even are ordained destitute of property; whatever they acquire becomes his property, whose they are.)

- Manu, viii, 416

1.2.4. THE EPIC (PURAN) PERIOD:

The Ramayana and Mahabharata have enshrined for us certain imperishable ideals of womanhood. The most important of these ideals, however, is an abiding faith in Dharma or the moral order of the universe. The Ramayana along with Mahabharata and the Puranas constitute the epic literature of India. "In the ancient literature of India, dating from centuries before European culture began, in the great epics of the Ramayana and Mahabhrata, women took distinguished part in the husband's work, aiding him with her love and counsel, accompanying him, like Sita and Draupadi, even into exile. She shared in the public ceremonies, and was accorded the highest rank and dignity".11

In the Ramayana, Sita is regarded as one of the five ideals and revered women of India, the other being Ahilya, Draupadi, Tara and Mandodari. The Hindu ideal of womanhood in Ramayana was that women performed sacrifices, offered prayers, and recited mantras. Sita is depicted as one who is prepared to cast off all the luxuries of the palace and accompany her husband to the forest, for, she finds her share on earth in her husband's forte. Here the exemplary conduct as a wife and the purity of motives are depicted as the ideal of women.

The association of a wife in the coronation rituals further establishes the status of equality accorded to her in some of the most essentials of ceremonies. Normally religious prayers and sacrifices were jointly performed by husband and wife. If the husband's participation was not available for some reason or other, his wife could perform the rites alone.

A woman in mother's role has been elevated to a very high position in Hindu religious literature. The Mahabharata says that mother excels in her greatness than fathers and even the whole earth. There is no guru like mother. Even a sanyasi is expected to touch the feet of his mother.\(^\text{12}\)

The giving away of a daughter in marriage (Kanyadana) was believed to confer good merit on her father. The elaborate Swayamvar organised by Janaka with desire to find the best warrior of the land as his son-in-law is a positive proof indicating that the daughter was not in any way an object

\(^{12}\) Kane, History of Dharmasastra, P.580.
of indifference in the family. Draupadi's Swayamvar is also an example in this regard.

Theoretically, women was never an individual capable of taking care of herself, she was to be subject to her husband, son or other relatives. The women was generally treated as a sort of property, the owner having naturally the authority to do what he liked with her. Polygamy was almost the order of the day among the kings. Dasaratha is said to have had 350 wives, besides the four principal queens. Polyandry, too, is in evidence in the epic age, Draupadi had five husbands.

In summing up, it may be said that during this period - on the one hand women are regarded as the embodiment of purity and spiritual power, on the other hand, they are viewed as weak and dependent.

The *Mahabharata*, is resplendent with a galaxy of illustrious women. Mention need be made of Gandhari, Kunti, Draupadi, Savitri, Damayanti, Sakuntala and *Satyabhama* amongst a galaxy of great women who, though *grihanis*, were also reputed *brahmavadinis* and saintly ladies. The noblest of the women characters in the *Mahabharata* is Gandhari. An exemplary wife, a *sahadharmini* in the real sense of the term who went to the extent of bandaging her own eyes for the sake of her blind husband Dhritarastra, she yet did not hesitate to remonstrate with him when she knew her husband was treading the wrong path. Hence the reasons why she firmly requested her husband to disown their sinful sons Duryodhana and the rest.
Her supreme injunction ‘Yotha dharma tatha jayah’, has gained universal significance. Another character Kunti is the very embodiment of patience, perseverance, and self-sacrifice. Mother of heroic sons Karna and Arjuna, Kunti shared her affection equally with her two sons. Her heart broke down when Karna fell dead in the Kurukshetra war. Draupadi, the central figure of the Great Epic, was a veritable goddess in human form. She was a woman who possessed courage and sense of dignity and justice. In short, Draupadi was the very embodiment of- Sri or good fortune in the house of the Pandavas. She was occasionally subject to moods of indignation, no doubt, but the loftiness of her soul, her unfailing courage in the face of disasters, her spirit of self-sacrifice, and above all, her moral earnestness and spiritual integrity have shed a lustre on the ideals of womanhood in ancient India.

1.2.5. THE BUDDHA PERIOD:

The position of woman was different in Buddhism, which appeared in the sixth century B.C. The religion was more practical and elastic as well as highly ethical. In Buddhism, every human being -man or woman-is a free agent able to work out his own salvation independent of any supernatural agency or the medium of priests or rituals. Nirvana is possible for both men and women. Buddhism is a literal reaction against orthodox. Brahmanism elevated the status of women. The inequality between man and woman is wiped out in matters of religion: both sexes were charged with duty of upholding Dharma. Hence women in Buddhism has a special place.
Buddhist marriage is a simple ceremony; it is a purely civil contract. The age of girl at marriage is twenty and is allowed independent choice. The marriage before twenty becomes null and void if it is contracted without express or implicit consent of guardians or parents. The rule does not apply to widows and divorcees for their first marriage has already freed them from paternal control.

Polygamy is allowed in the Buddhist law. A man can marry a second time during the lifetime of the first wife but a woman has not similar choice. Wives of inferior status such as concubines have a legal status and can inherit property of their husbands. This helped avoid illegitimacy of children.

The woman has the same right of inheritance as man. On marriage the couple have a joint interest on their estate and both get equal share or interest. Divorce is permissible by mutual consent under the Buddhist law. The grounds for divorce are incurable diseases such as leprosy. A woman has the right to adopt for reason of inheritance or out of sheer pity. Girls are not barred from adoption.

Buddhism does not consider woman as an evil or as one solely responsible for sensuality in the world. Yet she can be an obstruction in the path of deliverance. Woman is physically weak and dependent but mentally as good as man.
Buddha granted to woman the right to the monastic life and found an Order of Nuns. However, even among Buddhists, the prerogative of monks in relation to nuns are fully upheld. According to rule ascribed to Buddha, a nun, even if she has been ordained for a hundred years, must salute every monk in the most reverential manner even if he has only just joined the order; must remain standing in his presence, raise folded hands and show him due honour.

In the Buddhist time there were some great women scholars. Some of them, like Sangamitra, the sister of Ashoka, went to Ceylon to spread Buddhism. Among the authors of Theragaatha are forty-two women, thirty-two of whom are unmarried. In Jaina tradition, Jayant, a princess, remained unmarried and received ordination from Mahavira himself. On the basis of these instances from literature, Altekar, in his The Position of Women in Hindu Civilization, concludes “many girls in well-to-do families used to be given a fair amount of education down to about 300 B.C.”

1.2.6. POSITION OF INDIAN WOMEN IN MUGHAL PERIOD:

In Mughal period the position of women was in general subordinate to men. "In a word her life was state of perpetual wardship and the social laws and customs stamped her with a sort of mental deficiency."  

The two practices that have been detrimental to the status of women in Islam have been Talaq or unilateral divorce and seclusion of women. It is

13. Prof. K. M. Ashraf: Life and conditions of the people of Hindustan, P.192.
largely seclusion that has kept women backward in respect of education and health and prevented their economic and social participation and has been a hurdle in the way of realising their property rights. It created dependence of women on men. The muslim Shariat Law which has developed over the centuries places women in an inferior position in many respects. Hindu society’s attitude towards women became more rigid as it came in contact with Islam.

During the Mughal period many customs crystallized that adversely affected the cause of women. The powerful Muslim started marrying Hindu daughters forcibly by converting them to Islam.14 Consequent upon the terror of Turks and their nefarious activities, many social practices came into existence that went against women. Firstly, the Hindu heroic women began to embrace burning pyre instead of captivity of Muslims. This led to the evil custom of keeping women in seclusion with a view to keep them out of the sight of the Muslim traitors. This gave rise to the baneful *purdah* system resulting in the seclusion of women in the Zenana. And, in due course, this evil custom of *purdah* came to be recognized as a custom of respectablity, particularly among the higher classes. Women, belonging to the poor strata of society, who did not observe *purdah*, had to expose themselves to the exterior hazards of society. Secondly, the girls came to be married at an early age even among Muslims15 giving rise to the evil custom of the child-marriage that placed the married-child under the tutelage

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15. Akbar passed orders prohibiting marriage of girls before 14 years and boys before 16.
of husbands and in-laws from early years of her life. Thirdly, the female-child came to be considered as a burden and an unwelcome arrival by the parents in the families of both Hindus and Muslims giving rise to infanticide. Fourthly, these circumstances led to polygamy.\textsuperscript{16} Fifthly, the strict moral control over widows made their life miserable and turned many of them into whores. Sixthly, the practice of widow remarriage except in lower classes, disappeared. The circumstances were so compelling that women themselves resented remarriage and widows preferred \textit{sati} instead of remarriage.\textsuperscript{17} Finally, the education became beyond the reach of women in general; only elite class women were given opportunities that too only for religious learning and mental discipline.

Thus, it is evident that the Muslim period proved further detrimental to women. Many vices like \textit{sati pratha}, \textit{purdah} system, child marriage, infanticide, prostitution, prohibition of widow remarriage, and illiteracy became prevalent. The status of woman in society touched its nadir.

\textbf{1.2.7. WOMEN IN PRE-INDEPENDENCE PERIOD :}  

At the time of the advent of the British rule, the position of women in India was at its lowest ebb. Child-marriage was in vogue. Sati was prevalent, Purda was strictly enforced on Muslim women. Feminine literacy was considered as a source of moral danger. Almost all the Hindu temples openly harboured Devadasis.

\textsuperscript{16} Akbar ordered that a man of ordinary means should not have more than one wife. (Abul Fazl, \textit{Ain-i-Akbari}, translated by H.Blochman, 1873, P.277)  
\textsuperscript{17} F. Ovington, \textit{A Voyage to Surat} (London, 1696) PP.323-324.
"The enforced child-marriages; the exposure of the female children by throwing them at the junction of the Ganges and the sea, the violence used to make women follow the Sati rule, ......the shameful treatment accorded to a widow the famous khlimism which make marriage a profession rather than a sacrament, made woman not only an object of pity but many a women sighed in the secret recess of her heart and wished that she had never been born a women in the unfortunuate country."\textsuperscript{18} Notion of providing the means of instruction for female never enters into the minds of parents. Economically too women became dependent on men.\textsuperscript{19}

From the days of the East India company India was turned into a backward country by the elaborate, ruthless, systematic exploitation by the British from the start of their rule. The entire framework of Indian society was broken down.

However, the reformist wind blew in the direction of emancipation of women for the first time in India during the 19th century. The great thinkers in this direction were Raja Rammohan Roy, Ishwar Chandra Vidyasagar, Dayanand Saraswati, Swami Vivekanand and Mahatma Gandhi. The ideas of the social reformers became manifested to some extent by the laws enacted by the British Government in India. In 1829, the first social law was enacted by Lord William Bentinck to abolish \textit{Sati} and to declare it a crime.


Simultaneously, the Brahmo Samaj established by Raja Rammohun Roy stood for the principle of freedom of women and equality of sexes. He vehemently opposed *Sati* and campaigned for widow marriage. All these ideologies were reflected through the publications particularly, in *Sambad Kaumudi* published by him. Ishwar Chandra Vidyasagar took leading part in promulgating the Widow Remarriage Act of 1856 to make the widow marriage legal as well as to provide a status to Hindu widow in society. In order to prevent child widowhood, another great landmark of the 19th century was the Civil Marriage Act of 1872, which raised the age for marriage of the girls to fourteen and enforced monogamy.

During the National Struggle for Independence, Gandhiji gave a clarion call for emancipation of women from household drudgery and to join the movement for the freedom of the country. He was very well aware of the fact that if fifty per cent of the population being women would not join the movement and remain alienated from it, the non-violent struggle based upon people’s participation would not be successful. Hence, it was Gandhiji’s bidding that, women in large numbers came out from their homes and stood shoulder to shoulder with men in the struggle for freedom and this became unprecedented in Indian history. Gandhiji gave even a superior status to women. So he wrote, “I am uncompromising in the matter of women’s rights. The difference in sex and physical form denotes no difference in status. Woman is the complement of man, and not inferior.” Further, he says, “To call woman the weaker sex is libel. It is man’s injustice to woman. If by
strength is meant brute strength, then indeed, woman is less brute than man. If by strength is meant moral power, then woman is immeasurably man’s superior.” Further, he wrote, “Woman is the companion of man gifted with equal mental capacities. She has the right to participate in the minutest details of the activities of man, and she has the same right of freedom and liberty as he... By sheer force of a vicious custom, even the most important and worthless men have been enjoying a superiority over women which they do not deserve and ought not to have.” Swami Vivekananda also gave a very high status to women in India, when he said, “That country and that nation which did not respect women have never become great nor will ever in the future.”

Being inspired by the social reformers and national leaders, a large number of women came out and joined the freedom struggle. They formed a number of women’s organizations to create social and political consciousness among the women for their rights, equality and uplift as well as for their participation in the freedom struggle. The first women’s organization was the Indian Women’s Association, which started working in 1917 by Mrs. Margaret Cousins under the leadership of Mrs. Annie Besant and her Home Rule Movement. Mrs. Annie Besant was elected as the President of the Calcutta Session of Indian National Congress, and for the first time, in this session, the opinion was expressed that “the same tests be applied to

20. Sucheta Kripalani, Leader and Teacher of Women, Mahatma Gandhi 100 years, Gandhi Peace Foundation, 1968, New Delhi, P.216.
women as to men in regard to franchise and the eligibility of all elective bodies concerned with the local government and education.” Thus, the Indian National Congress recognized officially the equality of sexes in politics. In 1927, Smt. Kamla Devi Chattopadhyaya organized the All India Women’s Conference and adorned the chair of its General Secretary. Similarly, Sarojini Naidu’s contribution to the renaissance of Indian womanhood cannot be underestimated. It was her call for the women’s section of the Congress that led to the formation of the All India Women’s Conference. Similar roles were played by Raj Kumari Amrit Kaur, Mridula Sarabai, Sucheta Kripalani, Padmja Naidu, Durgabai Deshmukh, Aruna Asaf Ali and many other great women of India who set golden foot-prints for the arise, awake, and emancipation of women for their freedom, equality and identity as well as for their contribution to the nation’s freedom.

1.2.8. WOMEN IN POST-INDEPENDENCE PERIOD:

For centuries, women in India have been deliberately denied opportunities of growth in the name of religion and ancient socio-cultural practices. At the advent of independence women were prey to many abhorrent customs, traditional rigidities and vices due to which their status in the society touched its nadir. The situation of women was bleak all-around. At the personal-social plane, women were victims of widespread illiteracy, feeble-health, system of purdah, curse of polygamy degrading sacredrites of matrimony to a system of shameful traffic, putting to death female children, violence used to make women follow sati, and, above all, the complete denial of
individuality. At the economic-structural plane the women were prey to economic dependence, unrecognised work, absence of career and mobility, non-recognition of their economic contribution, poor work conditions and wages.

With the declaration of independence and the transfer of political power, the pith and marrow of women's movement of yesterdays suddenly subdued. Only a minority of erstwhile radical women leaders carried their activities beyond into post-independence period. Since the ultimate mission of struggle for independence was fulfilled, many women activists saw no reason to continue their activities.

Without doubt Independence brought the promise of actual liberation and equality. And, in the years following freedom, tremendous changes were felt in the status of women in Indian society. The first task in post-independent India was to provide a constitution to the people of India and the spirit behind the constitution was to bridge every gap between the citizens of India, so far as right, equality and development were concerned. Hence, the constitution does not make any distinction on the basis of sex and provides rights, freedom and privileges equally to both men and women. The preamble to the constitution promises to secure to all its citizens:

"Justice, social, economic and political,
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity and to promote among them all
Fraternity assuring the dignity of the individual and the unity and integrity of the Nation."
To attain these national objectives, the Constitution guarantees certain fundamental rights and freedoms such as freedom of speech, protection of life and personal liberty. Indian women are the beneficiaries of these rights in the same manner as Indian men. Article 14 ensures 'equality before law' and Article 15 'prohibits any discrimination'. Article 15(3) empowers the State to make 'any special provision for women and children', even in violation of the fundamental obligation of non-discrimination among citizens, *inter alia*, of sex. Article 16 (1) guarantees “equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”. And, Article 16 (2) forbids discrimination “in respect of any employment of office under the State” on the grounds only of “religion, caste, sex, descent, place of birth, residence or anyone of them”.

The *Directive Principles of the State Policy* enunciated in Part IV of the *Constitution*, like the *Preamble*, reflect high ideals of liberal democratic polity. They embody the major policy goals of the Welfare State. The Directive Principles are declared non-justiciable; but “nevertheless fundamental in the governance of the country”, and the State is charged with “a duty to apply these principles in making laws” (Article 37). Some of the Directive Principles concern women indirectly or by necessary implication, while a few are ‘women specific’. The *Directive Principles that concern women indirectly or by necessary implication include*: Article 38 directs the State to secure a just, social, political and economic order, geared to the welfare of the people: Article 39 (b), (c) and (f) relates to the distribution of own-
ership and control of material resources of the community for the common good, prevention of concentration of wealth and means of production to the common detriment, and protection of childhood and youth against exploitation and moral and material abandonment: Article 40 concerns the organisation of Village Panchayats to promote self-government, Article 41 appertains to right to work, education and public assistance in cases of unemployment, old age, sickness, disablement and other types of underserved wants; Article 43 contains provision of work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure, of social and cultural opportunities and the promotion of cottage industries, Article 44 calls for Uniform Civil Code; Article 45 ensures free and compulsory education for all children up to the age of 14; and Article 47 relates to raising the level of nutrition and the standard of living of the people and improvement of the public health. The Directive Principles which concern women directly and have a special bearing on their status include: Article 39 (a) - right to an adequate means of livelihood for men and women equally; Article 39 (d) - equal pay for equal work for both men and women; Article 39 (e) - protection of the health and strength of workers-men, women and children from abuse and entry into avocations unsuited to their age and strength; and Article 42 - just humane conditions of work and maternity relief.

The Fundamental Rights and the Directive Principles are the instruments to attain our national objectives - equality, liberty, and justice. The special attention given to the needs and problems of women to enable them to
enjoy and exercise their Constitutional equality of status, along with other specific provisions relating to hitherto suppressed section of society.

True to these objectives, the Constitution abolished all discriminations flowing from sex, caste, creed, colour, and place of birth. Women were placed at par with men in all respects. Women’s sacrifices of the pre-independence days were rewarded by the Constitutional fundamental right of equality between the sexes. The *Constitution of India* has not only provided equal rights and privileges between men and women, but has gone a step further to make provisions for special measures to be taken by the Government to improve the conditions of women by enacting laws and establishing separate institutions. Thus, the Constitution has once for all settled the position of women in society. And, this recognition of political equality of women was a radical departure from the socio-cultural norms prevailing in the traditional India and even from most advanced countries of the world.\textsuperscript{21}

Since the Constitution stresses the need for promoting with special care the educational and economic interests of the weaker sections of the people, the welfare and development of women received particular attention from the beginning. *Nehru wrote:*

"We talk about the Welfare State and direct our energies towards its realization. That welfare must be the common property of everyone in India

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\textsuperscript{21} For example, the United States and the United Kingdom granted franchise to women only after World War I. Most other countries—Eastern or Western—conceded it after World War II. Japan granted franchise to women in 1946 and China in 1949. France granted franchise to women in 1945."
and not the monopoly of the privileged groups as it is today. If I may be
allowed to lay greater stress on some, it would be the welfare of children,
the status of women and the welfare of the tribal and hilly people in our
country. Women in India have a background of history and tradition behind
them, which is inspiring. It is true, however, that they have suffered much
from various kinds of suppression and all these have to go so that they can
play their full part in the life of the nation”.22

In the post-independent India, we have a series of laws for the advancement
of women. The legislations have been brought out in order to give
equal rights and privileges with men, eliminate discriminations against
women, abolish inequality between the sexes, and remove external barriers
coming in the way of their self-realization and development.

Some of the important enactments affecting women can be recalled in
passing. The Hindu Marriage Act of 1955 prohibited Hindus from contract-
ing a bigamous marriage and outlawed polygamy. It gave the wife right to
obtain divorce in certain circumstances. The Special Marriage Act of 1954
and amendment to it in 1976 treats men and women as equal in matters
appertaining to property and inheritance. Hindu Succession Act of 1956 gave
women equal rights to succeed with the son and his children to all property
of the parent. The Child Marriage Restraint Act of 1976 has barred child
marriages and raised the age of marriage for girls and boys. The Dowry

22. Jawaharlal Nehru: "Foreword", to Social Welfare in India (New Delhi, Planning Commiss-
ion, Govt. of India, 1953).
Prohibition (Amendment) Act of 1984 (initially passed in 1961) has put restraint over dowry. The Hindu Minority and Guardianship Act has now empowered mother to be the natural guardian of child's property. The Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 has come heavily against flesh trade among women. There is plenty of legal protection for working women in the Factories Act, 1947, Equal Remuneration Act, 1976, guarantees women equal pay for equal work, Maternity Benefit Act, 1961 allows maternity relief to women.

These, and several other laws have brought a radical change in the Hindu social system and many new laws both general and special, are on the anvil. The raising of the age of girls at marriage, the recognition of the claim of daughters to inherit share in the family property, and the right of the widow to an independent share in her husband's property, denied the very basis of the Hindu joint family and became reality which was impossible for more than 2000 years. The erstwhile ideal of looking upon the husband as a God - 'Patidevata' - has either disappeared or is disappearing fast. Some of these laws are the most progressive in the world and at least, in terms of laws, Indian women are better off than their sisters in most Western countries.

Yet, in real sense, liberation of women is not merely a sum of legal enactments and constitutional sanctions. While not denying the importance of an effective legislative policy, it was not possible to bring about a change in the status of women through legislative action alone. One must acknowl-
edge that there is a large gap between the law and social attitudes and beliefs which act as barriers in the enforcement of laws for women’s emancipation. The complex system of social institutions, norms of behaviour and religious prescriptions, come in the way of proper implementation of special protective legislations for women. Consequently divorce remains at best a theoretical possibility due to women’s economic dependence on men and the social ostracism a divorced woman suffers from. The scope of marriage though enlarged in law stands to be narrow in practice: it is very difficult to marry across the barriers. The law exists, but women are scared to seek remedy through law enforcing agencies. The Suppression of Immoral Traffic Act has been messed up defeating the purpose for which it exists. The Succession Law is unsuccessful. Many legislations suffer from gender bias and discrimination against women. Dowry has been outlawed, yet it remains a fundamental part of most marriage negotiations even today. The widow remarriage has yet to be an universally acceptable social system. The protective legislation for working women is actually beginning to work against them; employers are reluctant to hire women due to legal safeguards. Despite legislative restriction on the age of marriage, child marriage is a common practice. Though the Constitution provides for equality between the sexes with special protection for women and children, Indians in their family life have been governed by personal and religious laws, which fail to give women their due. Inspite of many laws, women in India still continue to live under the stress and strain of male domination that manifests itself in the form of various kinds of cruelties to them.
Religion shapes and sustains certain images of women. Various communities of Indian society profess diverse religious faiths. Consequently, various systems of personal law exist. But because of the secular character of the polity, the State does not make any uniform civil law and makes many compromises and adjustments. Religion provides moral bases for the accorded and institutionalized role of women in society. Each religion has a store of myths and legends to define woman's characteristics, her assumed virtues and vices.

To sum up, the status of women has improved since independence due to legislative modernisation. However, despite legislation and a series of judicial decisions, in practice, yet women have not been able to achieve status equal to that of men. Perhaps this is not due wholly to defects and shortcomings in the legislation itself. Whatever the explanation, there is undoubtedly a mood of frustration about the existing legislations. Thus, there is a strong need for re-appraisal of the laws affecting women in India and a need to develop a new social culture to alleviate the position of women. This requires the mobilisation of public opinion, education of women, change in social attitude especially of men, an effective role for women's organisations and other voluntary organisations and, above all, a determined will by governmental agencies to put the law into action.

In what preceded, the status of women in India was analysed on the basis of some selected indicators of the social situation of women. Precisely put, the status of women seen from any indicator of social situation
continues to be inferior to men. The majority of women are still far from enjoying the rights and opportunities guaranteed to them by the constitution. Society has not yet succeeded in framing the required norms or institutions to enable women to fulfil the multiple roles they are expected to play. The existence of many social practices, the persistence of women's age-old problems and issues, and the neglect of the concerns of women show a process of regression from some norms developed during the nationalist movement.