STATUS OF WOMEN

अबला जीवन हाय! तुम्हारी यही कहानी।
आंचल में है दूध और आँखों में पानी।।
- Maithilisharan Gupta.
<table>
<thead>
<tr>
<th>Section</th>
<th>Subsection</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. 1.</td>
<td></td>
<td>Vedic Age</td>
<td>78 - 84</td>
</tr>
<tr>
<td>2. 1. 1.</td>
<td></td>
<td>Status of Women in Domestic Life</td>
<td>78 - 81</td>
</tr>
<tr>
<td>2. 1. 2.</td>
<td></td>
<td>Status of Women in Social Life</td>
<td>82 - 84</td>
</tr>
<tr>
<td>2. 2.</td>
<td></td>
<td>Post Vedic Age</td>
<td>85 - 103</td>
</tr>
<tr>
<td>2. 2. 1.</td>
<td></td>
<td>Status of Women in Domestic Life</td>
<td>85 - 90</td>
</tr>
<tr>
<td>2. 2. 2.</td>
<td></td>
<td>Status of Women in Social Life</td>
<td>91 - 103</td>
</tr>
<tr>
<td>2. 2. 2. 1.</td>
<td></td>
<td>Brahmana – Upanishad Age</td>
<td>92 - 94</td>
</tr>
<tr>
<td>2. 2. 2. 2.</td>
<td></td>
<td>Smritis – Puranas Period</td>
<td>95 - 97</td>
</tr>
<tr>
<td>2. 2. 2. 3.</td>
<td></td>
<td>Mediaeval Period</td>
<td>98 - 103</td>
</tr>
<tr>
<td>2. 3.</td>
<td></td>
<td>Status of Women in Modern Age</td>
<td>104 - 141</td>
</tr>
<tr>
<td>2. 3. 1.</td>
<td></td>
<td>Status of Women and right of Property</td>
<td>107 - 137</td>
</tr>
<tr>
<td>2. 3. 1. 1.</td>
<td></td>
<td>Status of Women and Law of Streedhana</td>
<td>111 - 118</td>
</tr>
<tr>
<td>2. 3. 1. 2.</td>
<td></td>
<td>Status of Women and Law of Succession before 1937 A D</td>
<td>119 - 120</td>
</tr>
<tr>
<td>2. 3. 1. 2.</td>
<td></td>
<td>Status of Women and Law of Succession from 1937 A D to 1956 A D</td>
<td>121 - 125</td>
</tr>
<tr>
<td>2. 3. 1. 2.</td>
<td></td>
<td>Status of Women and Law of Succession from 1956 A D to 2005 A D</td>
<td>126 - 131</td>
</tr>
<tr>
<td>2. 3. 1. 2.</td>
<td></td>
<td>Status of Women and Law of Succession after 2005 A D</td>
<td>132 - 137</td>
</tr>
<tr>
<td>2. 3. 2.</td>
<td></td>
<td>Status of Women and Education</td>
<td>138</td>
</tr>
<tr>
<td>2. 3. 3.</td>
<td></td>
<td>Status of Women and Social Security</td>
<td>139 - 141</td>
</tr>
</tbody>
</table>
CHAPTER 2

Indian tradition has generally respected womanhood. Even God is regarded as half man half woman - “Ardhanarishwara”. Manu declares that where woman are honoured, there the God are pleased; where they are not honoured, all works become fruitless.2

Women do have much right as the men have. They should have equal opportunities for intellectual and spiritual development. In early times education of women was encouraged. The Goddess of learning is Saraswati. The Mahanirvana Tantra says:

“A girl also should be brought up and educated with great effort and care”.

The very urgency of expressing the favourable views reveal that the plight of the women had not been what is ought to have been. In order to further the analysis of condition of women in context with the work in hand it is thought obligatory to discuss the position of women in ancient as well as in modern time.

The status and the position of women in India, has been a controversial subject, as it reflects the contradictory and the paradoxical nature of Indian society. While on the one hand, women has been called Devi or goddess, the abode of Gods, the perfect guide or guru of her children; on the other hand she has been criticized for the weakness of her character, for her unpredictable and impulsive nature and has even been denied the basic right of existence as a human

2 Manu 3. I. 56.
being. The staunch supporters of the Indian culture, who believe that women enjoyed an honourable, significant and unique position in the annals of Indian history, unlike other civilizations, quote the verses from the ancient Hindu literature to support their point of view. Similarly, those who believe that the women had a subservient or a secondary place, as far as their social, political, economical and religious rights are concerned, vis-à-vis their male counterparts, also quote the verses from the sacred Hindu literature, to show that women never enjoyed a free and independent status and that their rights in the society were considerably restricted. Moreover, the opinions of different religious scriptures differ from each other, thereby giving births to many contradictions. This difference of opinion raises many questions, as to the nature, and scope of free will enjoyed by women in different period of Indian history. Thus, this situation, or dilemma, demands a thorough and objective probe, to understand the status, position and significance of the role of women and the scope of freedom, free will and personal space as enjoyed by them from time to time. In order to have a better understanding of the present social structure and position of women therein, it is imperative to know the operation of various historical, political, cultural and economic factors which moulded the society. And such a historical perspective is all the more necessary in the case of society, with a continuous history of more than three thousand years. It is also crucial to have a brief look at the past society, because some of the norms and values affecting women today have their roots in the past.

Though the necessity of reviewing women's status across historical phases is non-controversial, the task is fraught with innumerable difficulties. Sukla Das observes, “First, the subject as it is too wide in scope defies generalization. Second, various changes

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occurred in the different periods of our long history to alter the position and status of women. Third, the contradictions in abundant source-materials with no precise dates and their varied interpretations render it rather difficult to assess the quantum of theory and reality. Fourth, vastness of the country where a large number of cultures confluenced and stages of development were not uniform poses difficulty in drawing any fixed or definite conclusion. Fifth, conglomeration of facts and fantasies about our past have often blurred a rational judgment. Considering these major constraints it would be unwise to brush aside the matter by a general estimate under any positive notion of 'good' or 'bad'." Similarly, eminent sociologist M.N. Srinivas\(^4\) has observed that "it (i.e. the changing position of women) has many facets and generalization is well nigh impossible because of the existence of considerable variation among regions, between urban and rural areas, among classes, and finally among different religious, ethnic and caste-groups. While in certain contexts the Indian subcontinent is a single cultural region, in many others it is heuristically more rewarding to look upon it as a congeries of micro-regions, differences between which are crucial". Similarly, Romila Thapar\(^5\) believes that "within the Indian subcontinent there have been infinite variations on the status of women diverging according to cultural milieu, family structure, class, caste, property rights and morals". Despite these difficulties, an attempt has been made here, to give an account of the position and status of women in India, in different periods of Indian history.

In the Vedic age women enjoyed equal opportunities for education and work. They were eligible for "Upanayana" or initiation and "Brahmacharya" or study of knowledge of Brahman.\(^6\)

In certain period of history, education of women was sadly neglected, and women lapsed into illiteracy and superstition. We have

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5 Ibid., p. 178
wasted, in our recent past, women's gift by failing to recognize them as human beings, able to act, to achieve, and to engage in projects given the right conditions. It has been tendency of men to use women as an object of amusement and pleasure. A woman is asked to look upon man as the meaning and justification of her existence. It is often asked that the oriental woman is a slave. It only means that self assertion is not her quality. The oriental woman is not very different from other woman in her inner most nature. She remains essentially feminine on account of her social and religious culture. She gives and not takes. The world over, women are devoted and obedient. They dare to suffer where man would shrink.  

A critical study of earliest text reveals that woman had and enjoyed an equal status during the dawn of civilization. The Rig Veda throws interesting sidelights on the position of woman. Indian womanhood is always viewed as very sacred and sacrosanct. According to Vedas both Stree dharma and Purush dharma stood on equal footing. Between man and woman there was mutual respect, cooperation and understanding irrespective of relation like husband-wife, father-daughter, brother-sister etc. Even women were more respected in family and society. In Ram-Geeta it is written that women perform variegated roles in their life:

KARJYE SUMANTRI KARANE SUDASI.
BHOJYE SUMATA SHAYANE SURAMBHA.
DHARMANUKULAK SHAMAYA DHARITI.

Thus women always fulfilled a commitment in the family as well as society. But this culture which was rooted in Indian soil slowly and gradually found its decay. Women by nature are soft at heart and physique. Taking advantage of the situation men started exploiting the woman. Discrimination occurred within the family. Son is preferred to

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7 Patnaik, Dr. Binayak, “Female Foeticide; a Socio-legal Analysis”, Cr. L. J. 2006 Journal 312.
daughter where later was considered as burden. The mobility of women was restricted. Freedom of speech and expression were denied. Women were deprived of decision making. Cultural norms often reinforced the image of docility, passivity and sub-servience. Female oppression continued from womb to tomb. In Supreme Court case of M Mudaliar, Justice K Ramaswamy noted as per the United Nations Report, 1980:

"Women constitute half of the world population, perform nearly two third of work hours, receive one-tenth of the world’s income and own less than one percent of world’s property."

Keeping in view all these things it can be mentioned at this stage in respect of women’s inequality and suffering in the following lines:

I am the woman who holds up the sky;
The rainbow runs through my eyes;
The sun makes a path to my wombs;
My thoughts are in the shape of clouds;
But my words are yet to come.⁸

A critical study therefore, is required to analyse to know the status and position of women at different periods of civilization, and to find out how dowry became the supplement to the lower status of women to-day. It is hoped that this study will thus help a lot to understand the problem of dowry and then in providing suitable and fruitful suggestions.

In this chapter researcher takes up study of the status of women right from the Vedic Age till to-day.

⁸ Eminent Indian Women, op. cit. p. 19.
2. 1. Vedic Age

2. 1. 1. Status of women in domestic life:

It will be quite evident from a perusal of the Vedas that the institution of marriage was fully developed long before the end of the age represented by the Samhitas of Rig Veda. It also throws interesting sidelights on the position of women. She was not only her husband’s life long companion in weal and woe but the mistress of his household, and a real partner in all his activities including religious sacrifices. The union of wife and husband, both in body and mind, is repeatedly emphasized and her entry in the husband’s home is regarded as an auspicious event, bringing blessing to the entire house hold, including the domestic birds and animals. The hymn holds out before us the pleasant picture of a happy home where husband and wife, faithful to each other pass their lives in peace and prosperity, and spend the well earned rest in old age amid sons and grand sons.⁹

The Vedic word *dampati*, used to denote jointly the husband and the wife, etymologically means the joint owners of the house. The same idea is also contained in *Avesta*, but whereas the *Avesta* enjoins upon the wife strict obedience to her husband, the marriage ritual in the Rig Veda (and also in its fully developed form in the *Grihya Sutra*) does not enjoin obedience upon the wife. This position of dignity was upheld by her participation in religious practice and sacrifices, which was regarded as the highest right and privilege in the society of those days. The woman was entitled to all the *Samskara* or religious sacraments like man and not only was religious prayer and

⁹ Ibid. p. 19.
sacrifices jointly offered by the husband and wife, but the wife alone could offer them in absence of her husband. To crown all, many women were regarded as *Rishis* or seers i.e. composers of hymn and some of the hymns in the *Rik Samhita* are actually attributed to women. Twenty such hymn composing ladies are named in the *Sarvanukarmanika*. Lopmudra, Apala, Viswavara, Siketa, Nivavari, and Ghosaare are some of the famous women whose names have been preserved in later literature.\(^{10}\)

The grounds for such high literary attainment were prepared by education in childhood. The girls, like boys, underwent the *Upanayana* ceremony (sacred initiation) at an early age, perhaps about the age of eight, and began the study of Veda. That this was the usual practice and was continued even in later ages has been proved by many interesting evidences. We are told in the *Athrva Samhita* (11. 5. 18) that by Vedic studentship, a girl wins a young husband. This shows that the high education were regarded as necessary accomplishment for being well placed in life, even in later Vedic age we hear of two classes of educated women:

1. *Sadyodwahas*:
   Who prosecuted her studies till her marriage only symbolically and formally and

2. *Brahmavadinis*:
   Who donned the sacred thread, a constant reminder of the holy vows, tend the fire and study the Vedas, but, in distinction from the boy students, do the begging for alms within their parental homes. They did not marry and pursued their studies throughout life.

\(^{10}\) Ibid. p. 20.
It is interesting to note in this connection that the list of great Vedic teachers to whom tribute of respect had to be paid at the time of Brahmayajna, includes some ladies, viz. Gargi, Vachaknavi, Vadava Pratitheyi and Sulabha Maitreyi. These evidences, to which other may be added, shows that the highest education, including Vedic studies, was open equally to man and woman, and many ladies like Ghosa, Apala, Lopamudra, Visvara, Indrani, Yami and others distinguished themselves not only as Vedic scholars but also as great philosophers, debaters and teachers. It may be stated without any hesitation that the general position and status of Indian women in the Vedic age was much higher than those present in any other ancient society that we know of, those of Greece and Rome not excluded.

The high ideals of married life – involving life long faith, devotion and love between the husband and wife – is nobly expressed in the marriage hymn of the Rik Samhita. Discription depicts before us a picture of that indissoluble partnership in life and death, which has never characterized the relation between husband and wife in Hindu society. But the society did not impose upon a widow the life of strict fidelity to her dead husband. She was certainly allowed to remarry.

Tending and milking the cow, and preparation of butter and ghee, which were such important items of diet in those days, were regarded as chief duties of the girls of the family and hence to denote a girl the term “duhitri” was used. Among other duties which are referred to as normal for maidens, are weaving, bringing water in a jar, bringing the “Soma” plant and extracting its juice and water over crops in the field. But these and others domestic duties did not stand in the way of her education.

There are references of old maid living at her father's house till her death. But such cases were very rare. The marriages of girls were thus not obligatory, but the normal condition of life.

The parents had no doubt a great amount of control over their daughter in selecting a suitable husband, but the maiden often made their choice. Recognized festive gatherings like 'samanas', which were frequented by young men and girls afforded ample opportunities for falling in love, which often ended in marriage. Child marriage is not referred to in Rig Veda; every thing indicates that girls were normally married after they have attained maturity.
1.2. Status of women in social life:

In modern times, the social status of a class generally depends upon its education, economic condition, and political privileges. In ancient times in India, the social status largely depended upon religious privileges and disabilities.\(^\text{12}\)

No religious disabilities were associated with the fair sex. In Vedic age there is ample evidence to show that the women not only studied the Vedas but also figured among the authors of the Vedic hymns.

Vedic studies began with *Upanayana* or sacred initiation, performed usually at the age of eight. This important ritual was performed as regularly in the case of girls as in that of boys. Sacred initiation and subsequent Vedic studies were almost indispensable qualification for securing a suitable match. Women composed hymns that were later admitted into the sacred canon. Usually Vedic sacrifices were to be offered jointly by the husband and the wife. Marriage, however, was not obligatory on women in Vedic age.

Vedic society did not subscribe to the ascetic view of life; marriage was essential in order to participate fully in the religious life. The wife took an active part in the daily and periodical sacrifices along with her husband. The duty of chanting of *saman* hymns usually fell

\(^{12}\) Eminent Indian Women, op. cit. p. 18.
upon her. If the husband was away on a journey the wife alone performed the different sacrifices, which the couple had to perform jointly. There was some sacrifices, like the Sita sacrifice (at harvest) and the Rudra sacrifice (to ensure fecundity among the cattle), which can be performed by the woman alone.

As the woman enjoyed the same privilege as men and received the same education, their status in the family was the same as that of men. Their status in the society also was naturally and fairly satisfactory. Many of them were famous scholars and authors. It is rather surprising to find that women were taking an active part in the industrial life of the early times. They were manufacturing arrows and bows, making baskets, weaving cloths and participating in outdoor agricultural work. It is important to note that words like female arrow makers (ishu kartryoh) do not occur in later literature. Among the fine arts, music and dancing appear to have been cultivated by women fairly extensively; their love, for these arts was well known. Since women were following many outdoor professions, there was naturally no purdah in society. It was hoped that bride would in the course of time be able to command the audience at a public meeting.

The position of women was on a whole satisfactory during the period. No one dreamt of reducing their status to that of Shudras, because they had exactly the same privileges about Vedic initiation and Vedic studies as men. The Aryans were at this time engaged in the arduous task of political expansion; women in Vedic India, as those in Homeric Greece, were actively co-operating with the man in their work. The free labour of enslaved population was not yet available, nor was it yet possible to admit non-Aryan wife in Aryan house holds. Women were no parasites in the Vedic age; they were useful and wealth
producing members of the society; their co-operation was valuable in securing prosperity in peace and victory in war. They could not, therefore, be treated with an air of patronage or contempt.

The ideal before women in social life was to help society in procuring prosperity in peace and victory in war. The war of expansion required a numerous army; women cheerfully accepted the responsibility of rearing a large family with ten sons for each mother. They did not lag behind in education; many women in cultured classes were authors, some of whose poems have been included in Vedic Canon. They enthusiastically performed the Vedic sacrifices, hoping thereby to secure divine favour, so necessary for the prosperity of the society.
2. 2. Post Vedic Age

2. 2. 1. Status of Women in Domestic Life:

More than two thousand and five hundred years intervened between the Rig Vedic Age and the close of ancient period at about 1200 A.D. Many changes happened in Hindu society during this period. It is inevitable that the status and position of women, too, should have undergone many changes. But it was remarkable that there was, from every point of view, a steady process of decline. These changes can be treated through different stages with the help of the literacy sources, which fall broadly into successive chronological periods, such as the later Samhitas, Brahmanas, Upanishads, Dharma Sutras and Smritis. It should suffice for the present to indicate, in a broad outline, how the different aspects of a woman’s domestic life, as described above, were radically changed till it reached the form in which we find it at the close of the ancient period, which, by the way, was not materially altered until the introduction of western ideas brought about a new social era in the later part of the last century.

From the time of the Dharma Sutras we find opinions slowly growing in favour of an early marriage of girls. Some of them recommended marriage not later than three years after the attainment of puberty, whereas other shortened the period to three months. The main idea behind this move was to preserve physical purity, since it was contended that one should select the bride who should not have even dreamt of sexual love. This idea was gradually pushed to its logical conclusion, and marriage before puberty came to be the general

13 Baudhayana Dharma Sutras, IV. 1. 14; Trini varshanayudeeksheta kumaree ritumati satee.
rule. Manu, through advocating the marriage of girls even at the age of eight,\textsuperscript{14} allows considerable latitude in this respect, and declares, "The maiden, though marriageable, should rather stop in (her father's) house until death than that he should give her to a man destitute of good qualities."\textsuperscript{15}

The effect of this can be easily perceived. Girls married at an early age could scarcely have received any education beyond the elementary stage. And marriage came to be regarded as obligatory; they have no opportunity to lead a life of studentship, like Brahmavadinis of older age. Thus, they were gradually deprived of higher learning particularly Vedic studies. A lack of knowledge of Vedas made them unfit to perform sacrifices and the various samaskaras (sacraments). Hence we find that these samaskaras, which were performed alike for boys and girls in the early period, were performed for girls without the Vedic mantras came to be stopped altogether. The Upanayana or initiation into Vedic studies having been stopped, women lost the status of a Dweeja or twice born, and came to be regarded as Shudras. In course of time they were, like Shudras, declared unfit for reciting or even listening to Vedic hymns.

There were no doubt exceptions, and in some cases, probably in aristocratic families, special arrangements were made for their higher education as also such accomplishments as music, dancing, painting and other fine arts suitable for women. This accounts for the women poets and scholarly women whose names are met in later literature. But, generally speaking, the education of women

\textsuperscript{14} Manusmriti, Verse 9. 94.
\textsuperscript{15} Ibid. Verse 9. 89.
reached a very low level, and ushered in an age when literacy of women was not only unusual but even unwelcome.

Marriage was the turning point in the life of the girls. Bereft of any education worth the name, regarded as ineligible for exercising any influence on the choice of her husband, the position of wife in a family steadily deteriorated.

In spite of unusual level of literacy some noble sentiments were expressed in general terms about the honour and respect due to women and the necessity of mutual fidelity between husband and wife.¹⁶ Manu starts with the fundamental principle that, day and night women must be kept in dependence by the males (of) their (families). Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence.¹⁷

Kautilya permitted divorce to both husband and wife on the ground of mutual enmity. Gradually such divorce, simply on the ground of dislike or hatred of each other, went out of use altogether and is not referred to in any Smriti work or other literature.

While the position of the widow was gradually becoming worse, the custom of Sati – self immolation of the wife on her husband’s funeral pyre – gradually came in prominence. It’s non-existence in the Vedic age is now generally accepted. We have clear instance of it as early as the fourth century B C. But gradually it came into prominence.

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The Vishnu Smriti (C 100 A D) recommends it on the ground that “the widow can go to the way of the departed soul by dying after him”. Although some writers strongly condemned it as suicide, others came forward to extol it.

It would be a mistake to suppose that the authors of the Smritis or any other class of men deliberately degraded the position of women. The change was neither sudden nor unexpected, and it developed its course during a long period. Thus a gradual aversion to women as a class appears as early as the Atharva Samhita, where charms were prescribed for changing the female foetus into a male one. A passage in the Aitareya Brahmana says that while the son is the hope of the family, the daughter is the curse or trouble to it. The similar sentiment occurs in various texts of a later age. The reason may be partly religious and partly economic, but the difficulties of arranging suitable marriage for a daughter might also have something to do with the growth of this feeling.

We also find a gradually increasing emphasis on women as an object of sensual pleasure. Even the great poet Kalidasa who draws an ideal picture of the wife, to which there is hardly any parallel in any literature, excuses the banishment of Sita by Rama on the ground that a man prefers fame glory even to her own body not to speak of his wife, who is after all an object of sensual pleasure. This stress on the sensual aspect had two important results. On the one hand, great emphasis was laid on the physical chastity of woman leading to child marriage. On the other hand, the ascetic and puritanical ideas, which came to be prominence about the sixth century B C, laid stress on the temptations offered by women and regarded them as chief obstacles to salvation. Women came to be looked upon as the source of all evils and
as the potent instruments of destroying the souls of men. Hence the
denunciations of women as a class reached a degree which is not
unknown even in other countries. It is well known now Christian’s
monks gathered at the synod of Macon in 585 A D seriously discussed
whether women were human being at all.

In spite of degradation in the status of women and many
heavy disabilities imposed upon them, they enjoyed certain privileges
and some favoured treatment in ancient India. Women were not to be
killed on any account. The daughter of a *Patita* (out caste) was not a
*Patita*, though her son was regarded as such. Women had to perform
only half of the *Prayashchitta* (expiation) that men had to undergo for
the same lapse. The *purdah* system had not yet come into vogue. On
crowded streets way had to be made for her, and she was exempted
from ferry-tax. The wife had an exclusive right over certain properties
known as *Streedhana* and acquired by her by way of gift, and the
husband had no jurisdiction over them save in exceptional
circumstances. Some Smritis make the husband liable to pay a heavy
fine for deserting a virtuous wife. Even for adultery, a penance is
prescribed in most cases, after which the wife is restored to all her
ordinary rights. Even if a woman were abducted by a *malechchha*
(barbarian) and was conceived thereby, she could, according to some
Smritis, be taken back after some purificatory ceremony. She was
generally exempted from taxes. Finally, it may be mentioned that as
against the strong denunciations of women referred to above we find
some writers making a spirited defence in their favour and highly
eulogizing them.

There is, moreover, one relieving feature in the otherwise
dark and dismal picture of women depicted in the Smritis. It is the frank
recognition of the high position of respect reverence due to the mother. The epics, Dharma Sutras and Smritis vie with one another in eulogizing the glory of the mother. She is regarded as the highest of the gurus, exceeding a thousand fathers. The son is to maintain a mother, even though an outcaste. While an outcaste father may be abandoned. One may avert the consequences of all curses, but a mother's curse can never be averted.

Finally it is necessary to note that although theoretically the status of women suffered a considerable decline on account of the views and ideals preached in the later Smritis, their effect was considerably diminished in domestic life by the natural instincts of men. After all it is natural for a normal man to cherish affection for his daughter, love for his wife and respect for his mother. These feelings were sure to prevail in the long run, and counteract to a large extent the teaching of the Smritis allotting a subordinate position of inferiority to women. Gradually a readjustment took place and new ideal animated the women. The position of the wife, as laid down in the ordinances of Manu, became the cherished ideal and played a dominant role in shaping the lives of women who are even now looked upon as models.
2. 2. 2. Status of women in social life:

The status and position of women in social life declined gradually. It would be a mistake to suppose that the authors of the Smritis or any other class of men deliberately degraded the position of women. The change was neither sudden nor unexpected and developed its course during a long period and the region of Mithila cannot be taken to be an exception to it. The period can be divided in following manners:

1. Brahmana–Upanishadic Age (C 1000 B C to 500 B C)
2. Smritis–Puranas Period (C 500 B C to 600 A D)
3. Mediaeval Period (C 600 A D to 1800 A D)
2. 2. 2. 1. Brahmana–Upanishadic Age (C 1000 B C to C 500 B C):

During this period the political expansion of the Aryan was completed in northern India and their position became unchallengeable. A section of conquered population had been reduced to semi-servile position, and its cheap labour was available for the manufacturing of bows and arrows during this period. In agricultural labour also, women ceased to take any active part. Spinning and weaving were something like a home or cottage industry, and women continued to take a more active part in it than men. On the whole women became less productive members of the society, and that indirectly lowered their status.

The religious privilege of women, however, continued to be more or less unaffected during this period. Their *Upanayana* continued to be performed as before, and they were offering the daily Vedic prayer like men.

During the early Vedic period, the father was usually the teacher of his children; during this succeeding age the professional teacher (Acharya) came into existence. Some of the educated women of this period are seen taking teaching as a career and were called Acharyas in order to differentiate them from the wives of teachers, who were called Acharyanis. Girl's education was usually done at home, as in the earlier period, by their fathers, brothers, and uncles. Some, however, went to outside teacher; a few of them lived in boarding houses known as Chhatrashalas. Some women of this period continued the tradition of the earlier age of participating and distinguishing themselves in the learned assemblies. Vedic studies were gradually falling into the background during this period; but some women took an active interest in them. Women scholars specializing in the Mimansa School of Kashakritosna were called Kashakritosnas. Philosophical studies were becoming more and more popular; many women like
Sulabha, Gargi and Maitreyi took keen interest in them. Some of them were discarding the pleasure and prospect of married life in favour of a life of asceticism. Nuns existed in Indian society, though in small numbers, even before the rise of Buddhism.

Some new notions were gradually getting established in society, which were eventually to effect the position of the women profoundly. In the earlier period, Vedic literature was not regarded as revealed. It was studied in the same way in which we study the devotional songs of medieval saints, poets today. During this period Vedic literature was canonized. It was regarded as revealed; it represented the very word of God, and therefore, it had to be preserved in its pristine form. If there was a single mistake in accent or pronunciation, or if a Vedic Mantra was misapplied, it would not only fail to produce desired result but also lead to the destruction of the reciter. This canonization of Vedic literature necessitated its prolonged study with meticulous care for about twelve years at least. Upnayana or sacred initiation took place at about the age of ten, and boys could master the literature by completing the curriculum at about the age of twenty two, when they married. The marriageable age of girls had to be about five or six years earlier than that of boys; their marriage therefore, could not be postponed too much beyond sixteen or seventeen, if their husband were to be twenty two or twenty three. Vedic study of the new exacting type, however, could not be completely finished before the age of sixteen or seventeen during this period, and therefore they remained incomplete at the time of marriage of girls.

During this period the supremacy of Aryans over the non-Aryans was completely established. The Indian Aryans ceased to be of that sturdy race which they had been in the earlier period. They became more pleasure loving than they had been before and the marriageable age of boys and girls began to be lowered. Legal work written at about 500 B.C. recommended that girls should be married at the time of
puberty, if no suitable husband is available; the marriage was permitted to be postponed by about three years. This reduced the average marriage age of girls to fourteen or fifteen and shortened the period of Brahmacharya (studentship) training by six or seven years.

As the contract of the Aryans and non-Aryans became closer, marriage of Aryans to non-Aryans became more and more common. This practice had a bad effect on the status of Aryan women.
2.2.2.2. Smritis – Puranas Period (C 500 B C to 600 A D):

The gradual effect of the new tendencies referred previously began to manifest themselves after about 500 B C. The marriageable age of girls, which was about fourteen or fifteen at C 600 B C, began to be lowered further and further. The three years’ period of grace after puberty that was permitted in the beginning for performing the marriage was gradually withdrawn. Smriti writers of about 200 A D advocate girls’ marriage at puberty, at about the age of twelve.

Early during this period (C 400 B C) the Upanayana of girls thus became a formal samskara (sacrament), not followed by any serious course of Vedic studies. It is found that Manu and Yajnavalkya started a new theory that the Samskara of marriage could serve the purpose of Upanayana, in the case of the girls; her husband was to be her Guru; his service was to be substitute for Guru-seva (service of the preceptor), and household management was to serve the purpose of sacrificial duties.

The discontinuance of Upanayana and its equation with the marriage ritual had the most disastrous consequences upon the social and family status of women. The privilege of Upanayana had been consistently denied to non-Aryans since early times, and when it was withdrawn from women, their status was automatically reduced to that of the Shudras. At about 300 B C it began to be argued that women were ineligible for Vedic studies like Shudras.

In the Vedic marriage rituals, the hope was expressed that the bride would rule over her new household whereas in the Smriti marriage ritual, it was asserted that the wife was to be to the husband what pupil was to a preceptor. When Upanayana became a formal
Samskara, women in general ceased to offer Vedic prayers (Sandhya) and sacrifices.

When uneducated girls began to be married at the age of ten or twelve, they naturally had no voice in choice of their husbands. The custom of Swayamvara (marriage assemblies) gradually disappeared, though it existed among the Kshatriyas even in the next period.

The ascetic ideal gradually got growing ascendancy in Indian society with the rise and spread of Buddhism and Jainism. This adversely affected the position of women. It is curious to note how male saints all over the world vie with another in attributing all sin and misery to the existence of women.

Vedic religion was fast falling into the background during this period, and its place was being taken by the Smarta – Pauranik religion. It is pleasing to note that women were not debarred from participating in the Smarta family sacrifices and Pauranik Vratas (observances). As a matter of fact, they, rather than men, were almost the sole custodian of the new popular Pauranik religion that was gaining a footing in this period and was destined to get ascendancy during the following millennium.

Buddhism which became fairly popular during this period, used to admit women as nuns to participate in higher spiritual life. Nuns could become teacher of female novices, but not of male ones; they were given a position inferior to that of men in the monastic administration. From the fifth century A.D they ceased to be admitted to the Buddhist order.

Nuns were not prominent in the Hindu religious life. Manu no doubt permits a Vanaprasthin (recluse) to retire to the forest along with her husband, but such cases were few. Hinduism later withdrew
the permission given in this respect and declared that Sanyasa (Monasticism) was not permissible to women in the Kali Age.

Marriage began to be regarded as obligatory for girls during this period, and they were usually married at the age of twelve. The average woman scarcely received any education. Some women were also cultivating music and dance, but that was for the benefit of themselves and their families. Spinning and weaving was the mainstay of women in misfortune, who had to make their living on the death of their husbands.

It is found that the widow’s right of inheritance was first advocated by Vishnu Smriti and which definitely lies down that the widow shall inherit the whole estate of the husband on the failure of sons. About a couple of centuries later, Yajnavalkya joined Vishnu in championing the cause of the widow’s right of inheritance. It is his authority that was relied upon by the British Courts when they recognized the widow’s right to inherit the property of the husband.
2. 2. 3. Mediaeval Period (C 600 A D to 1800 A D):

Except proprietary rights there was a further deterioration in the position of women in all other spheres of life. The formality of Upanayana was completely stopped during this period, and the religious status of women, even of the Brahmana class, was universally recognised to be as low as that of the Shudra.

The Pauranik religion prescribing a number of Vratas (religious rite) and Shanties (palliative rites) rose in ascendancy during this period. It is pleasing to note that women were regarded as fully qualified for it. As a matter of fact, the new Vratas that became popular at this time were more common among women than among men. Women were its real custodians. Classical Sanskrit, in which the Puranas and Smritis were written, ceased to be intelligible by C 1000 A D. Vernaculars gradually rose into prominence, and the Epics and the Puranas, translated into them, used to be expounded every morning in the village temples by the local Pauranikars from 1500 A D. The audience was overwhelmingly that of women. Women thus became the real custodians of the religion, which has pronounced them to be outcastes as far as Vedic privileges were concerned. The Bhakti (devotion) school became very popular by 1500 A D and women became its ardent admirers and followers.

Widows of the higher classes were prohibited from remarriage during this period, and most of them led a life of rigid austerity, devoting themselves to the service of the family and society. They were living embodiment of devotion, self sacrifice and disinterested service and were highly respected in society. The continuance of the old religious vein, moral fervour, and spiritual tradition is largely due to zeal, sincerity and devotion of Hindu women of
the medieval times. Those very women whom religion had treated as outcastes eventually enabled them to tide over difficult times.

Prior to 600 A.D. higher literacy was received by a small minority of girls belonging to the families of ministers, officers and landlords. Their number became still smaller during this period. With the establishment of Muslim rule, the old aristocracy, which had a love for learning, disappeared and its place, was taken by a new one, which had not the same solicitude for culture and education.

By the beginning of ninth century hardly one woman in a hundred could read in the country. Though Indian women were unlettered at this time, they were not uncultured. In fact, books being rare and costly, traditional learning and culture could be acquired more easily from the lips of a preacher than from the pages of a manuscript. Women who attended the expositions of the Puranas were often more cultured than literate men.

The cultivation of fine arts like music and dancing was also discouraged among women.

Women teachers were practically unknown in this period. Some women figure as authors down to the tenth century, among them we may mention the names of Vijayanka, Shila Bhattarika and Devi. Women authors, however, disappeared from our view from C 1000 A.D.

Medicine was followed by few women as a profession down to the seventh and eighth centuries. A treatise on women's diseases, written by a lady doctor, was translated into Arabic in eighth century. But the number of lady doctors was infinitesimally small, and the profession was usually picked up by widows in some doctor's families.

Girls in Royal families used to be given both military and administrative education during this period. Queens by their own right
were rare, but we get many instances of dowager queens like Vijaya Bhattarika of Chalukya family (650 A D) and Sugandha and Didda of Kashmir (10th – 11th century) administering extensive kingdoms as dowager-queens. In Chalukya administration several queens and princesses, like Akkadevi, a sister of Jaysimha III (1025 A D), Maila Devi, a queen of Someshwara (1050 A D), and Lakshmidevi, the chief queen of Vikramaditya VI (1100 A D) were working as governors of districts or cities. In Rajputana princesses used to take active part both in war and in administration even on critical occasions. Kurma Devi, the widow of king Samarsi, took active part in organizing resistance to the invasion of Qutubuddin in 1195 A D. The moving and inspiring address of Karnavati, a widow of Rana Sanga, rekindled patriotism in sullen nobility and was responsible for the strong resistance that was offered to Sultan Bahadur Shah of Gujarat at Chittor. Jawahirbai, another widow of Rana Sanga, fought at the head of the army and died on the battle field defending the fort. In Maratha history, Tarabai of Kolhapur and Ahilyabai of Indore played a prominent and creditable part. Women were generally successful administrators. An Anglo-Indian officer has observed to J S Mill that “if a Hindu principality was vigilantly and economically governed, if order was preserved without oppression, if cultivation was extending and people were prosperous in three cases out of four, he found it to be under a woman’s rule”. It is interesting to note that women were proving successful administrators at the time when their general social position and status had deteriorated in society. It is hoped by this work that these revelation from the past would rekindle the women and timoneers of state affairs to restore the lost honour and position to able women.

The marriageable age of ordinary girls was reduced to eight or nine during this period and they practically received no education.
With the advent of the Muslim culture, by 1200 A.D the purdah system became fairly well grounded in Northern India in the higher section of the Hindu society. It became stricter and stricter in the course of time, a hundred years ago; a father-in-law could not confidently identify his daughter-in-law, since he had no opportunity to see her face. However, this custom was practically unknown in Deccan with the exception of the ruling families.

The forcible conversion of men and women that were often carried out by the Muslim from 700 A.D further intensified the miseries of the Hindu women. Early Smritis have definitely stated that if a woman was criminally assaulted, she was not to be socially ostracized; they recommended her re-admission into the family and the society after some penance and purification. This procedure was followed in the beginning in the case of women forcibly converted or violated. Devala Smriti goes to the extent of declaring that women of this unfortunate category should be readmitted to the fold of Hinduism, even if their violation was followed by pregnancy. This liberal viewpoint was, however, given up by 1000 A.D. From that time onwards, Hindu women, once carried away by force into the fold of Islam, had no hope to return to the religion of their birth. They had to reconcile themselves with their captors and live a miserable life, not much differentiated from concubinage.

It is true that women as a general rule received similar and often even worse treatment in contemporary times in several countries both in the East and the West, but this can hardly be sufficient consolation or justification for us, who had earlier evolved quite satisfactory standard about the treatment of women. It is true that there was no female education worth the name even in the west down to the middle of the nineteenth century, but that would not condone its neglect by us who had once realized its benefits and advantages. It may be that
seclusion of women was common in some European countries for several centuries, but that is no justification for our Muslim conquerors.

It has to be admitted that Hindu society was on the whole unfair and unsympathetic to women during the last two thousand years. The average women no doubt led a contended life — fondled by her parents, loved by her husband, and revered by her children. But happiness was more frequently spoilt in this period than ever before by the prohibition of widow marriage, the revival of the sati custom, and the growing prevalence of polygamy and super-session. Society's attitude towards women was one of patronizing condescension. They could have no education worth the name and could hardly take any part in social and public life.

In Mithila too during the Mediaeval Period the women were treated as second class citizen. It was a patriarchal society and during that period women were understood as articles of enjoyment. Home was a symbol of women's dependency. They were understood as property and like other properties they were also given in gift or offered in gambling. Though there were wise and learned women like Lakhima, Dhirmati, Bishwas Devi and Chandrakala but they were not the representative of all the women in the Maithil society. In Mediaeval Mithila along with the sati custom polygamy was also prevalent. Where kings, feudatory and big landlords were keeping big haram, even the general people of higher moo/ were marrying to many women of lower moo/ . Child marriage was also prevalent in the Mediaeval Mithila. To save an adolescent girl from the eye of others, they were married in early age and later this system was provided with religious cover.18

18 Singh, Chandrabind, “Vidyapati Padavali mein Bhakti kaa Samajik Sandarbh” (Patna; Janaki Prkashan), pp 35-36; Samvarta Smriti, l. 67.; Sankhya Smriti:

MATA CHAIV PITA CHAIV JYESHTHO BHRATA TATHAIV CHA;
TRAYASTE NARAKA YANTI DRISHTAVA KANYAN RAJASWALAM.
In Mediaeval Mithila, there were many evil customs and bad practices which were helpful in exploiting the women. They were child marriage, polygamy, dissimilar marriage and marriage to an old. In the later half of the fourteenth century *Panjee Vyavstha* was implemented among the Brahmins and Karna Kayastha of Mithila and with this a competition developed amongst the Brahmins of lower *kul* to get related with the higher *kul*. They were ardent desirous to marry their daughters to the Brahmins of higher *kul* and for this they started giving more and more dowry. The avarice of dowry broke the limit of numbers of marriages and the Brahmins of higher *kul* started marrying more and more. To have 3 - 4 wives was a normal phenomenon. Again, those with less property and lower capacity of giving dowry were marrying their daughters to old or poor person. Women married to old had to face widow-hood very soon and they were left to lead a miserable life not going to last soon.\(^1^9\) It is said about the so called *kuleen* Brahmins – “जेतत्तक बियाहोल ओततत्तक गमाओल” (Where they married, left her there itself). Such *kuleen* Brahmins were invited by the poor Brahmins for marriage with their daughters. They were living with such wives for a few years and after birth of a few children they were leaving for another place for yet another marriage.

\(^{1^9}\) Singh, Chandrabind, Supra. p. 69
2.3. Status of Women in Modern Age:

At the end of 18th century status of women in India was totally deteriorated. For many of them “It was a long tale of suffering from birth to death.” They were married off at very young age. In some sections of the society, the widows could not remarry and were doomed to lead a miserable life. The most barbarous practice, which was prevalent among some so-called upper caste Hindu, was the burning of the widow on the funeral pyre of her husband. In Bengal Presidency alone, 8134 cases of Sati were recorded from C 1815 to 1828 A.D.

At that time female infanticide - a practice of killing infant girls - was prevalent in various sections of society in one way or another in the different part of country. This was due to the compulsion of expending heavily on the occasion of daughters marriage by their parents. Dowry system was prevalent among the maximum people and parents were compelled to give away a large sum of their property by way of dowry. If daughters remained unmarried, it was considered a matter of disgrace to the family. To avoid such an embarrassing and unpleasing situation many infant girls were killed at birth.

Education among women was very poor at the beginning of nineteenth century. Hardly one woman in a hundred could read in the country. Women teachers were practically unknown during this period.

Purdah system was fairly well grounded in the Northern India. It became stricter and stricter in the course of time and a hundred year ago, a father-in-law could not confidently identify his daughter-in-law.

For a long time the British rulers remained indifferent to the personal laws, usage and practices followed and professed by Indians however inhuman these practices were. During this very period their
main interest was in the economic exploitation of the country and they were not at all interested in the welfare of the people. During first half of the nineteenth century, however, efforts were made to eradicate some social evils. Some of the British Administrators who came to India during this period were influenced by humanist and radical ideas. It was because of them that some humanitarian measures were introduced in India.

In year 1935 English education was introduced in India. In spite of its serious limitation, English education had some positive features. It brought Indians, though in very small number, into contact with modern knowledge as well as modern idea of liberty, equality, democracy and nationalism. They became aware of the developments in other parts of the world. They began to think of the ways and means to modernize India. Some of them became pioneers of the movements for social reforms and other nationalistic movements in India.

Dada Bhai Nauroji, Lokmanya Bal Gangadhar Tilak, Shri Aurobindo, Raja Ram Mohan Roy, Ishwarchandra Vidyasagar, Shri Narayan Guru, Swamy Dayanand Saraswati, Swamy Vivekananda, Syed Ahamad Khan, Naoroji Furdoonjee, Keshav Chandra Sen, Mahatma Gandhi, Ravindra Nath Tagore, Veer Salingam, Gopal Hari Deshmukh and many others were those pioneers who took an active part in removal of social injustice and abuses affecting women and people of lower castes. Women too did not stand behind and some of them played crucial role in such types of pious jobs. Outstanding women like Annie Besant, sister Nivedita, Sarojini Naidu, Sucheta Kripalani, Durgabai Deshmukh, Kasturba Gandhi and Vijayalakshmi Pandit are those whose contribution is laudable. Where powerful campaign launched by Raja Ram Mohan Roy helped in banning Sati practice in 1829, through the efforts of Ishwarchandra Vidyasagar the Government passed the Widow Re-Marriage Act in 1856. Again, by means of the efforts Arya Samaj and especially because of the
contributions of Shri Har Bilas Sarda the Child Marriage Restraint Act 1929 was passed to prohibit child marriage.

The status of women in the Indian society mainly depends on their right and liability recognised and looked after by the societies in which they live. Right and liabilities of persons in societies are mainly based on their right and liabilities in property, marriage, adoption and maintenance. To evaluate the status of Indian women, therefore, it is needed to examine the laws relating to the rights and liabilities of Indian women in property and marriage which can be studied under the following heads:

(a) Status of women and Right of property
(b) Status of Women and Education and
(c) Status of Women and Social Security
2. 3. 1. Status of women and Right of property:

It has often been stated that women were as a rule, excluded from inheritance in the earliest times. The right of women as heirs has been the subject of controversy till the age of Commentary. While in some respect the position of women, particularly that of the daughters, the wife and the mother was high, passage derogatory to women scattered in the earliest literature have been generally taken to spell the inferior status of women. References in the Vedas are often relied upon not only by modern writes but by some commentators to support the view that women are in general incompetent to inherit. Boudhayana cites the text of the Veda:

"Women are considered to be destitute of strength and of a portion."\(^{20}\)

Madhava explains the Vedic dictum as meaning only that the wife does not get a share of the Soma beverage.\(^{21}\) Madhava’s interpretation of it is accepted as correct by Varadraja as well as by Messrs, West and Buhlers, Dr. Jolly, Mr. Kane and by the Bombay High Court.\(^{22}\)

As in the normal condition, the family was undivided; occasion would seldom arise for the recognition of the right of the woman. The dictum in Manusmriti is that a wife, a son and a slave are declared to have no property, merely meant that they were not independent, for, as Kalluka points out, Manu himself enumerated six kinds of Streedhana. The early importance of Streedhana is by itself sufficient to show that women had substantial rights though their position was inferior to that of a man. For the purpose of inheritance to

\(^{20}\) Tattiriya Samhita, VI 5, 8-2; Vedic Index I, 353, II, 486; Baudhayana II 2, 3, 44-46.
\(^{21}\) Madhviya; 44.
\(^{22}\) Mayne, pp 927-928.
the *Streedhana* the first acquirer at least was considered a fresh stock of descent and women were preferred to men. Probably the explanation is that in the case of inheritance to the property of men, males were preferred to women as heirs, while in the case of inheritance to the women's property women were preferred to men as heirs; but neither were completely excluded from inheritance to the others property. What is clear, however, is that notwithstanding the Vedic texts, when the partition took place, we find from the earlier writing that shares were allotted to the wife, mother and grand mother.\(^{23}\) The mother, the daughter and the grand mother were evidently first recognised as heirs to one who died without male issue.\(^{24}\) As early as Kautilya's *Arthashastra*, in the absence of sons the daughter born to a man of approved marriage took his estate. The right of succession was at once fully admitted. Vijnaneswara nowhere endorses the view that women are incompetent to inherit; he points out that the text of Narada which declares dependence of women is not incompatible with their acceptance of property.\(^{25}\) Vijnaneswara does not accept the position that the claims of such female only are to be admitted as have the support of express text. Vijnaneswara's views on these points which are followed by the other commentators and by the courts, are conclusive against the assumption that there is any general principle of Hindu Law, that women are excluded from inheritance unless named in ancient texts.

The general incapacity of women to inherit which is not admitted in Madras and Bombay but which is treated as a rule of Mitakshara Law in the other provinces does rest upon leading Sanskrit authorities of the Mitakshara School or upon reasons which are either uniform or logical. In the first place if it was Vedic rule of exclusion of women from inheritance, it would have been followed by all the Smritis and the Commentaries. But both the Smritis and the Commentaries

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\(^{23}\) Manu, IX, 217.  
\(^{24}\) Manu IX 130, IX 217.  
have recognised the right of several female heirs. In the second place, if it was a Smriti rule of exclusion that women are not entitled to rights of inheritance unless they are named in the texts, it has long been departed from by all the commentators and courts. For instance, Visvarupa recognises the right of the widows of the son and the grand son. Vijnaneswara and Mitakshara declare the great grand mother to be an heir though not mentioned in any text. Nilakantha brings in the sister as near sapinda even before paternal grand father and the Subodhini as well as the courts have recognised the other lineal female ancestors as heirs, though not mentioned in any texts or the Mitakshara. The clear and uniform recognition in Madras of the rights of the female bandhus and anomalous exclusion of female sagotra sapinda only on the ground that their order is difficult to fix, are against the rule of general incapacity of women to inherit. All the Sankrit lawyers, however, recognise in connection with succession to the property of the male a general preference of males over female. Accordingly, as it is quite clear from Mitakshara. II. V. 6 and Viramitra III. VII. 4 that samanodakas succeed only in default of Samangotra sapinda.26

From the above discussion it is clear that though women were not excluded from the inheritance or succession, they could not inherit the property of a male when a male member was alive in that very joint family. At the same time women could inherit the Streedhana property excluding the male.

Property had been the matter to decide the status of any one since the earlier time. Status of women had been to good extent collateral to her right to property varied from time to time and hence the status of women in family and society too has been changing. For examining the status of women vis a vis right of property to the women, researcher feels it necessary to examine the law of Streedhana and succession during the different periods of time. In order to further

26Mayne, op. cit. pp 927-930.
ascertain the status of women from time to time till today these laws can be studied under following heads:

1. Status of women and Law of Streedhana,

2. Status of women and Law of Succession before 1937 A D,

3. Status of women and Law of Succession from 1937 to 1956 A D,

4. Status of women and Law of Succession from 1956 to 2005 A D and

5. Status of women and Law of Succession after 2005 A.D.
2. 3. 1. 1. Status of women and Law of *Streedhana*:

It would appear that women's separate property known as *Streedhana* was recognized from the most ancient times. Hence it is important to examine some of the important features of *Streedhana*.

In the modern Hindu Law, the term *Streedhana* denotes not only the specific kind of property enumerated in the Smritis, but also other species of property acquired or owned by a woman over which she has absolute control, and she forms the stock of descent in respect of such property, which accordingly devolves on her own heirs. Here researcher is of the opinion that some important features of *Streedhana* should be examined as follows:

**A. Streedhana according to the Smritis, that is, the sacred writing of Rishis or Sages of antiquity:**

Manu enumerates six kinds of *Streedhana*:

1. Gifts made before the nuptial fire, explained by Katyayana to mean gifts made at the time of marriage before the fire which is the witness of the nuptial (*adhyagni*).

2. Gifts made at the bridal procession, that is, says Katyayana while the bride is being led from the residence of her parents to that of her husband (*padavandanika*).

3. Gifts made as a token of love, that is, says Katyayana those made through affection by her father-in-law and mother-in-law (*prtitidatta*), and those made at the time of
her making obeisance at the feet of elders (Padavandanika).

4. Gifts made by the father.

5. Gifts made by the mother.

6. Gifts made by a brother.\(^{27}\)

All the commentators are agreed that the above is not an exhaustive enumeration of Streedhana.

To the above Vishnu adds:

1. Gifts made by a husband to his wife on super session, that is, on the occasion of his taking another wife (adhipedanika).

2. Gifts, subsequent, that is, says Katyayana those made after marriage by her husband’s relations or her parents’ relations) (anwadhayaka).

3. Sulka, or marriage-fee, a term which is used in different senses in different schools.

4. Gifts from sons and relations.

Though there are eighty different Rishis (Sages) or writers of Smritis (Institutes), the texts of the below named eight Rishis are only the ones to which references are made by the commentators in their disquisition on the definition of Streedhana. Those eight sages are: — (1) Manu, (2) Narada, (3) Vishnu, (4) Katyayana, (5) Apastamba, (6) Vyas, (7) Devala and (8) Yajnavalkya.

B. *Streedhana* According to the Commentators:

(a) *Streedhana* According to the Mitakshara School:

The following is the definition of *Streedhana* as given by Vijnaneswara in the Mitakshara School of thoughts:

"That which was given by the father, by the mother, by the husband or a brother, and that which was presented by the maternal uncles and the rest at the time of wedding before nuptial fire, and a gift on a second marriage or gratuity on account of super session, and as indicated by the word adya (and rest), property obtained by:

1. Inheritance;
2. Purchase;
3. Partition;
4. Seizure; e.g. adverse possession and
5. Finding;

And this is the *Streedhana* according to Manu and the rest."

(b) *Streedhana* According to Bombay School:

It is noted that the Mitakshara definition of *Streedhana* is adopted by many while others do not do so.

The Mayukha which is held in high esteem in the town of Bombay, in Gujarat and in the North Konkan, would seem to adopt the definition of *Streedhana* as given in Mitakshara.

For the purpose of succession, the Mayukha divides *Streedhana* into classes, namely (1) Technical and (2) Non-Technical. Technical *Streedhana* refers the kind of property expressly recognised
as *Streedhana* by the old Sages, that is to say, (i) gifts from relations, and (ii) gifts from the strangers if made before the nuptial fire or at the bridal procession. Non-Technical *Streedhana* comprises every other kind of property belonging to a woman. This is a classification peculiar only to Mayukha.\(^{28}\) It is not followed in any other part of Bombay State where the Mitakshara alone is the governing authority.

**(c) *Streedhana* According to the Benares School:**

The *Virmitrodava*, a commentary held in high esteem in the Benares school, adopts and supports the definition of *Streedhana* as given above in the Mitakshara.

**(d) *Streedhana* According to the Madras School:**

The principal treatises of the Madras School are the *Smriti Chandarika* and the *Parashara Madhaviya*. These treatises do not give any definition of *Streedhana*. Nor do they adopt the definition of *Streedhana* given in the Mitakshara. The position, then, as regards the Madras School, so far the Madras decisions go, is this that the Mitakshara definition of *Streedhana* is to be applied in every case, unless the commentaries prevalent in that school unanimously exclude the kind of property in question from the category of *Streedhana*.

**(e) *Streedhana* According to the Mithila School:**

The *Vivid Chintamanani* is the leading authority of the Mithila School. This work also does not give any definition of *Streedhana*, but it enumerates eleven kinds of property, namely:

\(^{28}\) Mayukha, Chapter IV, Section 10, para 1 – 2 and 26.
(1 to 6) Those six kinds of property as enumerated by Manu and defined by Katyayana;

(7 to 9) Gift made on super session, gifts subsequent and Sulka;

(10) Ornaments, and

(11) “Food and venture” mentioned by Devala and interpreted to mean funds appropriated to a woman’s support.

(f) *Streedhana* According to the Dayabhaga or Bengal School:

The Dayabhaga of Jimutavahana is the leading authority of the Bengal School. To understand the definition of *Streedhana* as given in the Dayabhaga it is important to note the following two propositions which have been accepted by all the Mitakshara sub school:

(a) Every kind of *Streedhana* belonging to a woman passes on her death to her heirs;

(b) But every kind of *Streedhana* cannot be disposed of by a woman at her pleasure.

The only kinds of *Streedhana* which she can dispose of at her pleasure and without her husband's consent are gifts from relations. She cannot dispose of any other kind of *Streedhana* such as gifts from strangers, or property acquired by her by mechanical arts, without her husband's consent.

Jimutavahana first examines the various definitions, or rather descriptions of *Streedhana* given in the old Smriti texts. He alters the texts of Yajnavalkya by substituting the expletive *eva* for *adya* so as to confine the term *Streedhana* to the kind of property specially enumerated by Yajnavalkya. He rejects the definition of *Streedhana* given in Mitakshara, and defines *Streedhana* in these words:
“That alone is Streedhana which she (a woman) has power to give, sell, or use independently of her husband's control.”

C. Special Feature of Streedhana:

A Hindu female may acquire property from various sources. She may acquire it by gift, or by heritance, or on partition. She may also acquire it by her own labour and skill. But all property acquired by her is not Streedhana. Whether a particular kind of property is Streedhana or not depends on the following:

(1) The source from which the property was acquired.

(2) Her status at the time of acquisition, that is whether she acquired it during maidenhood, covertures or widowhood and lastly;

(3) The School to which she belongs.

Streedhana of every kind belonging to a woman passes on her death to her heirs. It is not so with regard to women's property which is not Streedhana.

Streedhana belonging to a woman is property of which she is the absolute owner, and which she may dispose of at her pleasure, if not in all cases during covertures, in all cases during widowhood. But the woman is not the absolute owner of property which is not her Streedhana nor can she dispose it off at her pleasure even during widowhood. She is merely a qualified owner of such property. In other words she takes only a limited interest in the property, nature and extent of which depends on the character of the property.
D. Right of a Woman over her Streedhana:

The whole law relating to the rights of women over their Streedhana has been evolved from the following four texts of which the first three are of the texts of Katyayana and the last is of the text of Narada:

(1) What a woman, either after marriage or before it, either in the mansion of her husband or of her father, receives from her lord or her parents is called Saudayika, that is, a gift from affectionate kindred, and such a gift having by them been presented through kindness, that the woman possessing it may live well, is declared by law to be her absolute property. The absolute exclusive dominion of woman over such a gift is perpetually celebrated and they have power to sell or give it away as they please, even though it consists of lands and houses. Neither the husband nor the son, nor the father, nor the brother has power to use or to alienate the legal property of a woman.\(^{29}\)

(2) The wealth which is earned by mechanical arts or which is received through affection from a stranger is subjected to her husband’s dominion.\(^{30}\)

(3) What a woman has received as a gift from her husband, she may dispose of at her pleasure after his death if it is movables, but as long as he lives, let her preserve it with frugality or she may commit it to his family.\(^{31}\)

\(^{29}\) Katyayana, Colebrook’s Digest, Book V, p. 475.

\(^{30}\) Katyayana, cited in Dayabhaga, Chapter IV, Section 1 para 19.

\(^{31}\) Katyayana, Colebrook’s Digest, Book V, p 477.
(4) Property given to her by her husband through pure affection she may enjoy at her pleasure after his death, or may give it away except land or houses. 

It follows from the above texts:

(i) That, during maidenhood, a Hindu female can dispose of her Streedhana of every kind at her pleasure.

(ii) That, during covertures, she could dispose of only that kind of Streedhana which is called Saudayika, that is gift from relation except those made by the husband.

(iii) That during widowhood she can dispose of her Streedhana of every description at her pleasure including movable property given by the husband but not immovable property given by him.

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32 Narada, Colebrook’s Digest, Book V, p 476.
2. 3. 1. 2. Status of Women and Law of Succession before 1937 A.D:

Before C 1937 A.D for determining the mode in which the property of a Hindu male governed by Mitakshara law devolved on his death, the following proposition are to be noted:

(a) When the deceased was, at the time of his death, a member of a joint and undivided family, technically called coparcenary, his undivided interest in coparcenary property devolved on his coparceners by survivorship i.e. if the deceased had son, a grand son whose father was dead and a great grand son whose father and grandfather both dead, succeeded simultaneously as single heir to the undivided interest of the deceased in the coparcenary property. In case of no such son, son's son or son's son's son property used to be succeeded by other sapindas but not by widows, mothers, or daughters of the deceased, thus in joint family property a female was not acquiring any right by inheritance.

(b) When:

(i) The deceased was in a joint family at the time of his death, he might have left self acquired property or separate property. Such property used to go to his heirs by succession –

(ii) The deceased was at time of his death the sole surviving member of a coparcenary the whole of his property including the coparcenary property used to pass to his heirs by succession –

(iii) The deceased was separate at the time of his death, from his coparceners, the whole of his property,
however acquired used to pass to his heirs by succession –

to a son, a son’s son whose father is dead and son’s son’s son whose father and grandfather both are dead simultaneously succeed as a single heir to the separate or self acquired property of the deceased with rights of survivorship. Property was succeeded by female heir only when there was no surviving male member. In case of any surviving male member either in the joint family or in the separate family of the deceased, the female member of that family was not acquiring any right in the property of the deceased male member of the family.

Under the law prior to the Act of 1937, the widow of a person governed by the Mitakshara law had only a right of maintenance in respect of coparcenary property in which the husband had interest. In respect of separate property left by her husband, she had only the right of maintenance when the husband had left a son, grand son or great grandson. She could inherit his separate property only in absence of these immediate heirs.  

33 Mulla, Sir D F op. cit. pp. 89-94.
2. 3. 1. 3. Status of Women and Law of Succession from 1937 A.D. to 1956 A.D:

In 1937 the Hindu Women's Right to Property Act, 1937 was introduced to confer new and better rights on widows by modifying previous law as laid down by the text and interpreted by judicial decisions.

The main features of this Act are:

1. In case of separate property,
   (a) The widow along with the sons is entitled to the same share as the son.
   (b) A pre-deceased son's widow inherits in like manner as the son, if there is no son surviving of such predeceased son; and like in a 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 applies mutatis mutandis to the widow of pre-deceased son of a predeceased son.

2. In case of Mitakshara joint family, the widow takes the place of husband.

The general effect of the Act was to put the three female heirs mentioned in sub section (1) of Section 3 on the same level as the male issue of the last owner along with the male issue or in default of them. That sub-section deals with the property over which a Hindu has a power of disposition by a testament. Such property in the case of Hindu governed by the Dayabhaga School is separate property as well as ancestral property in his hands and his share in joint family property. And in the case of Hindu governed by Mitakshara, it means his
separate property. Sub-section (2) of Section 3 applies to his interest in joint family property which would mean all other property in which he had interest under Mitakshara law at the time of his death. The Act puts the widow of a member of joint family in the place of her deceased husband and the husband’s interest in the joint family property under the Mitakshara, though undivided, vests immediately upon his death in the widow and does not devolve by survivorship. Section 2 provides that notwithstanding any rule of Hindu Law or custom to the contrary the provision of Section 3 shall apply where a Hindu dies intestate. Therefore, whenever the provisions of Section 3 apply any other rule or custom of Hindu Law which would otherwise have applied ceased to govern the parties and such rule or custom must be ignored as being superseded by the Act. Sub section (4) of Section 3 confers on the widow the same right of claiming partition of the joint family property in the same way as any other coparcener entitled to do so under the general law.

The acquisition by the widow of the same interest as her deceased husband in the joint family property does not by itself disrupt the Mitakshara joint family and the widow continues as before to be a member of the joint family. Her rights are augmented but there is no immediate severance of the joint family. Though her position in the joint family may in many respects be analogous to that of any undivided male coparcener in the joint family, it would be a misnomer to call her a coparcener. She does not by the operation of the Act become a coparcener. But it would not be correct to describe her interest as inchoate or imperfect till she claims partition. She becomes entitled to the undivided interest of her deceased husband and takes “the same interest as her husband” and not “as the same right as her husband”. And when the deceased had left a son, she becomes entitled to be in the same position as the son. She may or may not choose to demand partition. Therefore, where she does not enforce partition and the joint family continues as before without any severance of the joint status the
incidents of the coparcenary continue to apply to all the members including the widow with this reservation that her existence suspends the rule of survivorship. And even then the rule of survivorship continues quad the other coparceners; and their interest as also the interest of the widow is liable to fluctuation by births and deaths in the joint family which continues as before but subjected to her statutory right.

On the same principles the rights and powers of the Karta of the joint family to deal with and alienate for legal necessity the coparcenary property including the widow's interest and represent all the members of the joint family to the outside world continue as before. The position of the Karta remains unaffected as long as there is no partition and the position of the widow is somewhat analogous to that of the male coparcener in the family. The Karta, though he is entitled to exercise his ordinary powers under the ordinary law, is not competent to make a gift of the property belonging to family and the widow is entitled to challenge any unjustified alienation if her interest is sought to be defeated. And even where the joint family after the death of her husband consists of herself and sole surviving coparcener, the later cannot make a gift of the entire property because the widow's existence would prevent the vesting of all the coparcenary interest in him. The widow has during her life time all the power which her husband had save that her interest is limited to a widow's estate. Widow can alienate her interest in her husband's share; she can even convey her interest in the same for necessity or other binding purposes. She can ask for partition and separate possession of her husband's share. In case she asks for partition, her husband's interest would be worked out having regard to the circumstances existing in the family on the date of partition. If she divided herself from the other members of the family during her life time, on her demise the succession would be traced to her husband on the basis that the property was his separate property. If
there was no severance, it would devolve by survivorship to other members of the joint Hindu family.

Where property devolves on a widow and the property was the separate property of her husband, she takes the same share as a son. This is by inheritance under section 3(1). The interest that she acquires, in a case where her husband was a member of a joint family, does not devolve on her by survivorship. All the High Courts are agreed on this but there is some difference of opinion on the question whether she can be said to have acquired her interest in such property by inheritance. According to Nagpur, Patna, and Madhya Pradesh High Courts such interest devolves on her by inheritance as the only modes of devolution known to Hindu law are survivorship and inheritance. The high court of Madras, Bombay, Andhra Pradesh, Calcutta, Rajasthan, and Orissa have taken the view that such interest is neither by survivorship nor by inheritance but a special type of interest which is the creation of statute. It is submitted that the later view is preferable. According to the later view, it is not necessary for the widow to take out a succession certificate for enforcing any claim or right of the husband which devolves on her under the Act.

There is nothing in the Act to show that the widow takes in the joint family as defined and divided share as if the husband had separated from the joint family at the view of his death. The Act rests in the widow immediately upon his death the undefined and fluctuating interest in the joint family property which he himself had till the moment of his death. She will, therefore, get a share of the joint family property at the date of demand by her for the partition or at the date if partition is

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34 Jadaobai v. Puranmal (1944) Nag 832-219 I. C.
35 Mt. Rajendrabati v. Mungalal (53) A. P. 129.
36 Bhagobai v. Bhaiyalal (57) A. M. Pra. 29.
37 Sardambal v. Subbaram, (1942) Mad. 630 201 I.C.
38 Shankar v. Gangaram (1952) 54 Bom. L R 75.
39 I L T Development v. Kotayya (35) A. Andhra 135
40 Ratan Kumari v. Sundarlal (59) A C 787.
41 Chhotaki V Chandra Prakash (64) A Raj 32
42 Hare Krishna v. Jujesthi (56) A Orissa 75.
43 Natrajan v. Perumal (1942) 2 M L J 668.
at the instance of any coparcener as the case may be and not a share of the property as at the death of her husband.\textsuperscript{44} Under the law prior to the Act, the widow of a person governed by the Mitakshara had only a right of maintenance in respect of coparcenary property in which the husband had interest. In respect of separate property left by her husband she had only the right of maintenance when the husband had left a son, grandson or a great grandson. She could inherit his separate property only in the absence of these immediate heirs. All this was changed and her right was augmented as pointed out above.\textsuperscript{45}

Thus the measure was intended to redress disabilities and to give better right to women. The Act of 1937 introduced far reaching changes in the law of succession and was obviously intended to give better rights to women by recognizing their claim to fair and equitable treatment in certain matter of succession. However the Act does not speak anything in favour of the daughter and mother and their status, even after coming of the 1937 Act, remains unchanged, that is, as earlier and daughter at the best could claim inheritance only in the matter of \textit{Streedhana} property. She had no right of inheritance or succession when her father had son, son’s son or grandson’s son.

\textsuperscript{44} Nagappa v. Mukumbe (51) A B 309
\textsuperscript{45} Mulla, Sir D F, op. cit. pp 89-94.
2. 3. 1. 4. Status of Women and Law of Succession from 1956 to 2005 A.D:

The law of succession has close connection with the doctrine "He who inherits the property also offers the pinda." It was based on the principle of consanguinity and the theory of spiritual benefits was a later development. In most cases spiritual efficacy, propinquity and natural love and affection ran in the same lines. But difficulties arose when these ran in diverse lines and scheme of inheritance with some radical differences came into existence in different parts of the country. The difference in law of inheritance between the two system of Mitakshara and Dayabhaga, the existence of a number of schools of Hindu Law, the Matriarchal system prevailing in some southern parts of the country and dissimilar local and family customs obviously could not embrace a whole genus of cases and it was not possible to expect a system which was a homogeneous and consecutive whole. Besides a number of anomalies and some inequitable rules of succession, different systems had come into existence due to historical reasons and in some cases due to the conservatism of judicial interpreters. Moreover conflicting pronouncements of courts based at time on variant readings of the ancient texts had resulted in congeries of decisions, in case of some of them it was difficult to extract the ratio decidendi and to harmonise them with the rest.

In this connection it may also be mentioned that Streedhana became the most complicated and difficult branch of the law of succession. The difficulty of the subject may be gauged from what Jimutavahana stated in the Dayabhaga after finishing his discourse on Streedhana. "Thus has been explained the most difficult

46 Vishnu, XI, 40.
subject of succession to a childless woman." It must have been seen that women occupied a very dependent position in the family and her rights to hold and dispose of property were generally speaking limited. The partial recognition only of the status of women in matters of property was no doubt understandable under ancient and medieval conditions. But their status had to be fully recognised in modern times of social emancipations and equality. The principal reforms that were called for and one which became a pressing necessity in view of changed social and economic conditions was that in succession there should be equal distribution between male and female heirs and the Hindu women's limited estate should be changed into full ownership. The Hindu Women's Right to Property Act, 1937, which introduced important changes in the law of succession by conferring new rights of succession on certain females although it gave better rights to women in respect of property, was found to be incoherent and defective in many respects and gave rise to many anomalies. Fragmentary legislation in the form of a number of un-co-ordinated rules did not prove satisfactory remedy and the mass of floating case law that grew up was somewhat bewildering and there seemed to be no end to the number of conundrums suggested.

It has been generally recognised from a long time that the rules of inheritance should be turned into a body of law, compact in form and easily accessible. A uniform and comprehensive system of inheritance recognizing equable distribution between male and female heirs and contained a series of coherent propositions carefully considered and authoritatively stated was, therefore, a long felt desideratum.

The Hindu Succession Act came into force on 17th June, 1956. It amends and codifies the law related to intestate succession among Hindus and brings about some fundamental and radical changes in the law of succession. Even if it seems to break violently
with past it has to be conceded that it is characteristic of the age which is one of the great ideals and fast changing social economic and political theories. Hindu Law was at no times in its long history static, but was empiric and progressive. It was only after the reduction of India, the British and because of their policy of non interference in matters of personal law that it ceased to grow with times. Its principal characteristic of elasticity and assimilation were ignored and the degree of rigidity that was given to it was such that legislation alone could cope with the felt necessities of the times. But unfortunately that could not be done. Thus the status and position of women were further subdued.

The Act lays down a uniform and comprehensive system of inheritance and applies *inter alia* to persons governed by Mitakshara and Dayabhaga Schools as also to those in certain parts of Southern India who were previously governed by the Marumakkattayam, Aliyasantana and Nambuduri system of Hindu Law. The Act applies to any person who is a Hindu by religion in any of its forms and developments including those who have deviated from orthodox standard of Hinduism in matters of ceremonial observance. Buddhists, Jains and Sikhs are also within its ambit. So also are converts and reconverts to any of the four religions – Hinduism, Buddhism, Jainism and Sikhism. Section 4 of the Act is of vital importance and gives over riding effect to the provision of the Act. It abrogates all the rules of law of succession hitherto applicable to Hindu, whether by virtue of text or rule of Hindu law or any custom or usage having the force of law, in respect of all matters dealt with in the Act. The Act also supersedes any other law, contained in any central or state legislation in force immediately before it came into operation in so far as legislation is inconsistent with the provision contained in the Act. The outstanding features of the new scheme are described as the simultaneous heirs or preferential heirs among the son, daughter, widow and mother of the deceased. It may be noted that male and female heirs are treated as equal and without distinction. The Hindu women’s limited estate is
abolished and any property possessed by a female Hindu howsoever acquired is now held by her as her absolute property and she has full power to deal with it or dispose it off by will as she likes. The restraints and limitations on her power cease to exist even in respect of existing property possessed by a female Hindu at the date of the Act coming into force whether acquired by her before or after the commencement of the Act. It is now held by her as full owner and not as limited owner.

Under the previous law, succession to Streedhana i.e. women's property – varied accordingly as the woman was married or unmarried and according to the form of her marriage. It varied according to the source of Streedhana. The rule of descent of the different schools also varied. The Act abolishes all this and propounds in Section 15 a definite and uniform scheme of succession to the property of a female Hindu who dies intestate after the commencement of the Act.

The Act, although it deals with succession, has a bearing on other branches of Hindu Law such as joint family etc. It prescribes that where a coparcener dies intestate the Mitakshara coparcenary does not necessarily become disrupted. There can be little doubt that radical reform was required in the Mitakshara law of coparcenary and that where one of the coparceners dies there should be equable distribution of his property not only in respect of his separate or self acquired property but also of his undivided interest in the coparcenary property among his male and female heirs and particularly his son and daughter. Probably the best solution would have been to abolish the ancient legal formulae of acquisition of right by birth and devolution by survivorship since the logical way was to assimilate the Mitakshara to Dayabhaga in this respect. This would also have the merit of equal treatment of the nearest female heirs of a coparcener and of bringing about uniformity in the law in all parts of India.\(^\text{47}\)

\(^{47}\) Mulla, Sir D F op. cit. pp 757 – 765.
The scheme of the Act in the matter of succession to the property of a Hindu dying intestate (after the coming into force of the Act of 1956) is to lay down a set of general rules for succession to the property of a male Hindu in Sections 8 to 13 including rules relating to ascertainment of the shares and portion of the various heirs which may be described as the statute of distribution. It is part of this scheme to enact in Section 15 and 16, separate general rules affecting succession to the property of a female dying intestate. Section 17 provides for certain modification and changes in the general scheme of succession to the property of male and female Hindus in relation to persons hitherto governed by the Malabar and Aliyasantana law. The existence of a system founded on Matriarchy in certain parts of Southern India in contradiction to that in the rest of the country which is Patriarchal having the common ancestor as the founder of the family and which relationship is primarily by agnation, has been well established and judiciously recognised for a long time.

The outstanding feature of the new scheme of what may for convenience be described as the “simultaneous heirs” or “preferential heirs” is that property devolves in equal shares among the son, daughter, widow and mother of the deceased.

In view of Section 6 of the Act of 1956 which excludes the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, The State of Andhra Pradesh, Tamil Nadu, Karnataka, Maharasthra and Kerala have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara Coparcenary property.

But Section 23 of the Act of 1956 disentitled a female heir to ask for partition in respect of a dwelling house wholly occupied by a
joint family until the male heirs choose to divide their respective shares therein.

Thus it is clear that though a lot had been done by the Act of 1956 to provide equality between the male and female heirs; there were certain provision which denied the right of equality in succession to family properties to the female heirs. This was again those impediments which were required to be removed by bringing about appropriate legislation for securing equality of status of woman with respect to those of men. This problem was, however, removed by the Hindu Succession (Amendment) Act, 2005.
2. 3. 1. 5. Status of Women and Laws of Succession after 2005 A D:

In view of the facts discussed in preceding paragraphs Law Commission of India recommended to amend Section 6 of Hindu Succession Act and omission of Sections 23 and 24 to remove the discrimination between son and daughter as contained in its 174th report on “Property Right of Women: Proposed Reform Under the Hindu Law”.

The Parliament to achieve the above object passed the Hindu Succession (Amendment) Act, 2005 which came into effect on 09. September, 2005.

Now Section 6 of the Hindu succession Act 1956 reads as follows:

"6. Devolution of Interest in Coparcenary Property - (1) on and from the commencement of the Hindu succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, -

(a) By birth become a coparcener in her own right in the same manner as the son;
(b) Have the same right in the coparcenary property as she would have had if she would have been a son;
(c) Be subjected to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener."
Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu succession (Amendment) Act, 2005, his interest in the property of a joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got
had he or she been alive at the time of partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

**Explanation** – For the purpose of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt;

Provided that in the case of any debt contracted before the commencement of the Hindu succession (Amendment) Act, 2005, nothing contained in this sub-section shall effect –

(a) The right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the
same manner and to the same extent as it would have been enforceable as if the Hindu succession (Amendment) Act, 2005, had not been enacted.

**Explanation** – For the purpose of clause (a), the expression “son”, “grandson” or “great-grandson”, shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

**Explanation** – For the purpose of this section partition means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by the decree of a Court.

Hence now in a Mitakshara Joint Hindu family the position from the 9th day of September, 2005 is that the daughter of a coparcener shall –

(b) By birth become a coparcener in her own right in the same manner as the son;

(c) Have the same right in the coparcenary property as she would have had if she would have been a son;

(d) Be subjected to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be
deemed to include a reference to a daughter of a coparcener.\textsuperscript{48}

Thus from the above discussion it is clear that so far the Hindu personal laws are concerned, our legislation has done its best to ameliorate the status of Hindu women at par with that of a Hindu man.

So far the Muslim women are concerned, the Holy Quran makes it clear that women have rights similar to those of men but yet man is a degree above woman. The Holy Prophet gave a definite status to the woman in the society, as a wife, as a mother, as a sister. He made a ceiling to the number of wives a man could have and specific conditions were laid down for contracting plural marriage. Once married, Muslim woman's right stands curtailed in certain matters. She can refuse consummation unless the mehr is paid promptly to her, but she can not prevent her husband from contracting another marriage. The husband can divorce her for good reasons but since he is not required to establish those reasons before any earthly authority, the divorce can be at his will, even at whim.

The Chapter “Sural-ul-Nisa” in the Holy Quaran states that the position of women must be equal with that of men. The Holy Quaran recognizes marriage with two, three or four wives only when the person can do justice to so many, and not otherwise. By “not otherwise” means that Holy Quaran emphasises to do “justice” with women.\textsuperscript{49} At the same time Muslim personal law does not provide for equal share of female with respect to male in the Ancestral property. Thus it is clear that the Muslim women are not equal in status with respect to their male counter part and their rights are under subjugation.

All these enactments as discussed earlier in this Chapter have been brought into effect with the purpose of enhancing and raising the status of women in the society as well as in the family. But one

\textsuperscript{48} John D. Mayne, Hindu Law and Usage, 15\textsuperscript{th} Edition, Bharat Law House, New Delhi pp 1227-1228

\textsuperscript{49} Dewan, V K, op. cit. p. 37
cannot say that these enactments have achieved the desired goal. Law alone cannot bring the change as desired and expected. Pandit Jawahar Lal Nehru, the first prime minister of India, also had agreed to this view as quoted earlier in this work.
2. 3. 2. Status of Women and Education:

The position of Mithila in the field of education too, is not good. At the time when India got freedom, Bihar was ranking among the states that stood at the top. But with passage of time, where all other states continued its progress with time, Bihar remained stale and still and now it stands at the bottom. The condition of Mithila in this regard is even worse. Mithila is an area where people's income is very low. The infrastructure is very poor and there is lack of roads, drinking water, sanitation, health services, supply of electricity and schools and colleges and the people here are bound to live in poverty and misery. Whatever steps are taken by the Government to improve the condition of the region is washed away by the annual flood which cause enormous amount of destruction every year. Certainly it affects the education too and overall status of education in Mithila is very poor. The position of women education is even worse and women literacy rate exceptionally low. Here lies an area named Kusheshwar Athan (East) where the women literacy rate is only 09 percent.\(^50\)

The average women literacy rate of Mithila is much below than that of Bihar. Where for Bihar it is 33.57 percent, for Mithila it is only 28.35 percent. According to the Census of 2001, the literacy rate of Begusarai, Darbhanga, Madhubani, Saharsa, Samastipur, Sitamarhi and Supaul has been 36.21, 30.35, 26.56, 25.31, 32.69, 26.35 and 21.02 percent respectively.

To improve the status of women's education, the present govt. is trying to provide better policy and programme of education for females which shall be discussed latter.

\(^{50}\) Census 2001.
2. 3. 3. Status of Women and Social Security:

The Maithil women cannot be said to be full secured in their family as well as in society. Poverty along with illiteracy is the main hurdle in this direction. A girl born in an uneducated family has very little chance to get admitted in any school. If the family is poor then possibility of getting education further becomes bleak. Due to uneducation and poverty they are married off in very early age without considering any proper match. Many times they are married to far elder person who treat her nothing more than an article of amusement. Such girls become mother in early age that result in a poor health and illness.

Not in all, but in large parts, girls live with disadvantages, burdens and fears. They carry the burden of neglect, discrimination, household work, looking after siblings, work outside the home, etc. Girls live with fears - fear of being aborted, poisoned, neglected and fear of being killed, besides fear of not getting adequate affection, care, nourishment, medical attention and education. Maidens live in fear of sexual abuse ranging from playful manhandling to rape. After marriage women in this region face the problem of loneliness, maladjustment and mental and physical torture in their in-law's house because they have not brought sufficient dowry, because they are immature to bear the responsibilities of house-hold chores and because none is responsible for their welfare and well-being because their men are away for earning livelihood.

Crime against women is on increase in the area.51 There are rape victims, victims of harassment in buses, gardens, factories, offices and even in temples. No place is safe for them! They live a life of fear. There is fear of being sold - sometimes in the name of marriage, sometimes for child labour or prostitution. Status of women in Mithila

51 Appedix “I” to the work.
region too is not more than commodities, object of amusement and pleasure, object which is used when young, beautiful and healthy and discarded and thrown away when found to be old, ugly, infirm and suffering from diseases. It will not be exaggerating about Mithila which is annually hit by flood, poverty stricken and devoid of infrastructure that women remains homeless for ever. She is brought up along with a felling that she has to leave the place of birth. Once married, she has to leave her father’s home. At husband’s home also she is not secure and can be thrown out according to will and wish of in-laws’. She makes the home, decorate it and look after it but cannot be called owner of the home. She does all the activities of farming but does not own any land. She grows, prepares and serves food to all members of family but has no control over it. Such is the pathetic status of today’s women especially of Mithila region.

Though, women belong to different classes, castes, religions and communities, they have very different roles, status, position and conditions, but, on the whole, one could still say that almost all women in India suffer from patriarchal structures and ideologies; they experience gender inequalities and subordination. Women lag behind their men in all indicators of social and human development. India has the most adverse sex ratio for women in the world, in spite of region like Kerala where these ratios are not adverse to women. Life expectancy for women is lower than that of men; women’s health, nutritional and educational levels are significantly lower than that of men. Women are concentrated in low skilled and low paid jobs; they get lower wages and have lower income than men and they have very little or negligible ownership or control over property or means of production. The number of female-headed households has been increasing but those households are amongst the poorest in our country. It cannot be pleaded that women have control over family. The participation of women in political and social decision making in Mithila area like any other part of the country is abysmally low. They are
excluded from jural authority. They have no say in the formulation of social, economic, legal and political rules, which govern their lives and keep them subjugated.

Thus it is evident from above discussion that even after 60 years of independence, we have not achieved the required level of development as far as the status of women with regard to that of men is concerned. Sincere endeavour is required to be made to achieve the equality of status between men and women. More social awareness, more emphasis on education, equal distribution of work and resources, and many other social security steps are required to be taken for the development of women in order to elevate the status of women, in India especially in Mithila Region. Though the present Govt. is trying to provide social security to the women by making various policy and programme like 50% reservation for women for the post of local bodies, yet a lot is required to be done to achieve a position competing to that of a man.