CHAPTER I
INTRODUCTION

Men and women, the two halves of humanity are complimentary to each other. Epitomised as the hallmark of ‘creation’, the symbolism of woman as a source of life since the evolution of mankind, conjoining strength and gentleness, has conferred an element of security on the uncertainty of earthly existence.

The concept of Ardhnareeshwar as that of the creator (half man half woman) is unique to Indian mythology. Mythology and history symbolize womankind as the power of the universe. In India, for every truth the opposite is also true. This clichéd phrase comes out to be doubly true when we view the lives of Indian women. Hinduism presents a fundamental duality for women. On the one hand she is fertile and benevolent (the deity Lakshmi – the bestower) on the other hand she is aggressive and malevolent (the deity Kali – the destroyer).

Nonetheless, in Hindu religion the deities of wealth, strength/power and learning – all vest in female goddesses. Mythology and history recognize womankind as the power of the universe i.e. the energizing element – these egalitarian beliefs in the traditional Hindu culture have done no good to the womankind in India.

The crass interpretation of the religious texts and scriptures with patriarchal mindsets have been prejudicial to the female sex. Though historically, Indian women enjoyed a social status unparallelled in human history according to the most widely accepted interpretation of the ancient Hindu text. Despite a recurrent myth of the golden age of Indian womanhood as women being recognised as partners in religious duties and heroic resisters to alien rulers have never been given a supreme position at any time.
The patriarchal structures of society over the period of time have gradually led to gender inequality. The conglomeration of such engrained beliefs cumulatively resulted in abject subjugation of women. The women were confined only to the submissive, secondary and dependant roles curtailing their independence, self-expression and freedom. The concatenation of such deemed values of patriarchy had virulent repercussions on the life of woman leading to various social evils such as child marriage, violence against women in the form of dowry system, dowry deaths, sati, female infanticide and so on.

Women have been consistently oppressed in nearly all aspects of life, from public to private and political to personal. Women are vulnerable because of vicious circle of stereotypes, entrenched and bolstered by centuries of socialization. The worldwide feminisation of poverty, sex-exploitation, illiteracy and unawareness have but naturally pushed the women in the backseat in every sphere of development – social, economic, political, cultural etc., thereby conferring them secondary status.

Even at the international level manifestation of violence against women in the form of genital mutilation, female infanticide and pre-natal sex-selection as an obvious violation of human rights of the female sex have been explicitly discerned by various international treaties, conventions, resolutions and declarations. The consensus against female infanticide, pre-natal sex-selection became so crystallised by twentieth century that these have already been embodied in various United Nations Declarations. On many scales female foeticide and infanticide have been equated with ‘genocide’. At the global level women’s issues have conglomerated to seek international attention. A de facto discrimination has been widely documented for all spheres of law and for all regions of the world highlighting the cultural practices peculiar to specific regions. Efforts have been made at the international level in the fields of education,
health, work and equal participation of women and men in decision making processes at all levels. Women's equality will continue to be a dream until governments bring out the changes needed to give women their full human rights.

Four world conferences on women, Convention on the Elimination of All Forms of Discrimination popularly known as 'Women's Bill of Rights' have been path breaking in pursuit of enhancing the status of women. Despite some improvement in the position of women, even the minimally acceptable standards in many parts of the world are lacking. Complete equality of men and women is still a mirage.¹

In contemporary India, the status of women is deplorable and has sunk to its lowest ebb. Status determines the position of a person in a society and the importance attached to that position. Status is a relative term that has periodical and spatial variations and relative connotations. There is no sole factor determining the status. The creator of the universe created both men and women alike and bestowed women with a unique power to further and carry on his creation. There is no denying the fact that a man is born of a woman because of woman's inherent quality of progeny. Unfortunately, procreation served as a retrograding factor bringing her down in the social hierarchy.

Women in India have traversed a long way from women scholars and sages in Rig Vedic period to the present day 'so-called' empowered woman – educated, independent and aware. Here again lies a paradox comprising another duality posed by globalisation. On one hand women are reaching new heights and on the other there is commodification of women, sex crimes and violence against women are on the rise like never before. Such extremely opposing positions occupied by women in Indian culture and social set up are unique in itself.

¹ For details see infra Chapter III
Historically, traditional pattern of neglect and deprivation of females including infanticide, were an integral part of society. Female infanticide is an abominable crime. It is most heinous, brutal and destructive manifestation of anti-female bias permeating patriarchal societies. The profound bias against the girl child is reflection not only of a mindset and value system but of a more deep seated malaise in the social system that deprives equal education, food, nutrition, healthcare etc. to woman. Being a multi-dimensional phenomenon, female infanticide has far reaching repercussions on the society as a whole affecting the political, economic, demographic, psychological and moral aspects. Since the ancient times multifarious ways have been adopted to end the life of a girl child. Son obsession in the patriarchal societies is ghastly for the survival of the girl child. In various communities in India female infanticide has been a tacitly accepted norm.

As we enter the 21st century, the irony with which the mankind is confronted is - with more advancement in the field of science and technology, the greater is its predicament in making proper use of it. Social consciousness lags behind in keeping pace with advances made in this sphere. The naive notions of scientific and technological advancement drive the society towards social progress, which require more cautious attitudes to the potentialities of science and technology. Technological advancement and progress has rather dehumanised the mankind. It has reinforced the atavistic thinking with a trend prejudicial to the female sex. Progress in bio-medical sciences intended to be a boon, has turned out to be a bane for the society. Society at large needs much more long time to view the development in its true perspective. Various inhibiting factors prevent the society to fully appreciate and make proper use of the research in science, such as age-old customs, practices, the reactionary pull of the past etc. Medical technology for the detection of genetic abnormalities has
virtually turned out to be a misnomer for sex prediction followed by sex selective abortions. Technology has the potential of making a ‘single –
gendered’ world. It is trying to overpower nature. Nonetheless, technology
itself is not bad. It is the man who uses or abuses it. The life ‘saviour’
technology has proved to be ‘killer’ technology for the female sex
contributing in the systematic decimation of the females. Though abuse of
technology is not possible without professional input. It is a retrogressive
trend than a progressive one.

This trend towards ‘social brutalisation’ leading to a ‘single gendered
world’ presents the enormity of sex-selective abortions. The conscience
purging hi-tech silent killing of girl foetuses followed by sex-determination
has replaced female infanticide to a large extent thereby making the
gender bias seem less oppressive. While infanticide has a cultural history
in India, foeticide is a relatively new phenomenon, permeating societies
with no previous history of infanticide. India, with the legacy of various
peculiar, detrimental, derogatory and discriminatory customary and cultural
practices like sati, bride burning, dowry-deaths, devdasi system, infanticide
etc. has internalised the practice of ‘female foeticide’ with an obvious ease.
Female foeticide has emerged as yet another form of denying the right to
be born, though extenuating the sin of killing a baby girl after birth.

It is disheartening to note that in patriarchal societies the atavistic
attitudes as that of son obsession still prevail and with the technological
boon, the craving for son has been reinforced. It was an enigma to know
the sex of the unborn child a couple of years back, but now it is possible
not only to determine but to pre-select the sex of the unborn child with the
advances made in science and technology. The most common methods of
sex-determination of a foetus are – Chorion Villous Biopsy, Amniocentesis
and Ultrasonography. Besides sex determination methods, technologies
have now gone far ahead to ensure that the female sex is not only
clandestinely. People recognize the act not as immoral but as a crime. Law has been flagrantly violated sans impunity. The concept of 'morality' has altogether changed, assuaging the conscience of the people.

The Constitutional obligations and guiding principles of egalitarian and progressive society acknowledging dignity and status of women as equal citizens has nowadays become a moral imperative. The legal sphere commands equality but the social sphere is not prepared to eschew the dominant man-woman psyche despite explicit legal and constitutional rights. Constitutional provisions and other statutes provide a parameter of righteousness of one's behaviour in the society. Women-specific provisions in various laws were necessitated owing to wide 'gender disparity' in terms of discrimination, exploitation, sex related crimes so as to give extra protection to women. To concretise these provisions in real perspective gender differentials have to be recognized otherwise the equal status of women will always remain utopian. Various amendments have been brought about to make existing laws gender neutral and also pro-women.

Concretising the ideology of gender justice enshrined in the Fundamental Rights\(^3\) of the Indian Constitution, Directive Principles\(^4\) of State Policy, Fundamental Duties\(^5\) along with the International Obligations, various gender specific legislations have been enacted to give legal protection to women against various practices like Sati, Dowry, female foeticide, immoral trafficking, domestic violence etc.

The Constitutional provisions, laws and the judicial decisions\(^6\) confer \textit{de jure} rights on women but in order to make them \textit{de facto} entitlements,

\(^3\) Articles 14, 15, 16, 23.
\(^4\) Articles 28, 39 (a), (d), (e), (f), 42, 43, 44, 45.
\(^5\) Articles 51 A (e) \textit{inter alia} imposes fundamental duty on the citizens to renounce practices derogatory to the dignity of women.
they have to be given support of certain schemes and programmes. The most pragmatic approach towards the betterment in the status of women has been conceptualising and concretising the mandate of the Constitution of India by policy formulation for women through the instrumentality of planning. As an existing support system for the survival and development of the girl child the Government machinery provides – Department of Women and Child Development; Department of Education; Department of Family Welfare; Ministry of Labour; Ministry of Social Justice and Empowerment and Ministry of Information and Broadcasting. From time to time a large number of programmes and schemes for the welfare and development of women, girls and children have come to be implemented by Government of India and the State Governments.

Besides development welfare and social justice being a generic concept taken up by these plans, the Tenth Five Year Plan (2002-2007) covers the specific problem of female foeticide and infanticide. The plan intends to take long term measures of sensitising the society to change the mind set which is negatively disposed towards the girl child as unwanted, neglected and discriminated both within and outside her home.

The Committee on the Status of Women in India (CSWI) set up in 1971, recommended nearly two decades ago the setting up of a National Commission for Women (NCW) to fulfil the surveillance functions to facilitate development of women. The Commission was set up as a statutory body under the National Commission for Women Act, 1990 to review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women. It was a major step in the development of women's rights and enhancement of their status.

Besides proposed amendments in existing laws, NCW has also proposed the initiation of new bills/laws for the better protection of the
rights of women. Violence against women in the form of civilized killing of female foetus continues to be one of the prime concerns of the Commission.

Systematic extermination of female foetuses is leading the society towards a precarious situation from where there is no come back and the society would have to pay heavily for the same. At no point in the commission of this heinous crime, the two steps, i.e. sex-determination and termination of pregnancy need to be correlated. This renders the legislative endeavour and judicial intention a set back. The challenge posed by the menace of female foeticide is creating demographic imbalance, which would have irreparable impact on the political and social structures. Society seems to be nonchalant towards this unabated practice and its consequences. Female foeticide is both the factor as well as consequence of low status of women. We collectively need to hush up our efforts to sensitise the society and to strengthen the implementation machinery with more zeal so as to save the mankind from extinction.

A. Research Hypothesis

Scary revelation of the disproportionate sex-ratio in India has left many concerned askance. More astonishing is the sex-ratio in the age group 0-6 years (820:1000). This skewed sex ratio is the explicit depiction of gender bias perpetuated throughout the country only with a few exceptions. Since olden times women had been prey to various discriminatory practices and violence in different forms and in different stages of life. Because of devalued life killing of female infants had been acceptable in certain regions. The intrinsic low value attached to the female sex has today taken new façade of female foeticide. Fast developing reproductive technological advancement complimented with strong son obsession and patriarchal mindset has served as catalytic
factor in aggravating sex selective abortions. This practice has hogged the limelight since 2001 Census of India that has prompted to carry out the present socio-legal study to analyse the precipitating factors/causes behind sex selective abortions (female foeticide), its social response and also the efficacy of legal control mechanisms to curb this heinous crime. It is indeed a crime against humanity.

The present hypothesis rests on the presumption that if remained unchecked the repercussions of this mass massacre shall be devastating the biological and social structure of the society. Pervasive nature of this practice necessitates a comprehensive socio-legal study so as to well equip the legal arena, to strengthen the existing legal control mechanism and also to keep pace with the newly emerging trends so as to combat this problem.

B. Research Methodology

The present research work necessitated both theoretical and empirical study for identifying the real factors/forces and causes, of the problem of female foeticide, the social response to the problem its impact on the status of women and also to study the practical aspect of the problem.

For theoretical work, reliance was placed on the literature relating to status of women, various traditions and customs; various support systems like constitutional, legislative, legal: Government programmes and policies and also the international conventions and conferences affecting national scenario.

In any research process an important step is to select the method to be used for data collection. Following techniques have been used to collect the data for analysis.

• Interviews with the married females between the age group 18 years to 40 years were conducted.
• Interviews were conducted with judicial officers, gynaecologists, ultrasonologists and advocates in order to have in-depth knowledge of the practical experiences of the people concerned.
• To solicit the views of doctors and lawyers, discussions were arranged with them.
• Interviews with the nursing home owners were conducted.
• Doctrinaire research was primarily based on internet and other related literature.

In order to have fair representative data related to the crime of female foeticide judicial officers, police officers, advocates and doctors were given questionnaires to collect the data for analysis and evaluation. Questionnaires were designed for different categories of people keeping in mind the objectives of the survey and the informational requirements. Four sets of questionnaires *i.e.* for doctors, police officers, judicial officers and advocates were prepared to have in-depth view of the situation of female foeticide. The study is based on the samples of 50 respondents. The responses were analysed which have been elucidated in the charts and presented in the study.

Perceptions of the married females in the reproductive age group were captured with the help of interview schedules.

In-depth interaction was undertaken with the stakeholders *i.e.* female respondents to gather insight into the cultural practices, sex preference, decision making processes, social pressures and expectations.

**C. Object of the Study**

Law by no means is an end in itself nor will it be sufficient to tackle the issue. So long the systematic oppression and exploitation of the women by patriarchal and other dominant power structures persists, the
laws and policies purported by the same forces assume little significance in context of their victimization. Effective transformation is sought in the social arena where patriarchal values have impacted the man-woman relations. In such scenario it is all the more essential to study the extent, trend and pace of female foeticide with which it is further eroding the status and dignity of the female genre. The object to carry out this study is to explicate all possible aspects of female foeticide; evaluate the effectiveness of legal control mechanism and to offer some suggestions for the same.

The aim of this study is to analyse various aspects of infanticide and foeticide in India, their causes, intervention steps taken by the Government and to recommend remedial measures to eliminate the menace.

D. Analysis of Literature

The literature and information available has been thoroughly studied and evaluated. The literature resource for analysis is available in the form of a number of books, magazines, journals, Government Reports, United Nations Documents and internet sites.

E. Universe of Study

Sex-ratio is an important indicator of the status of women as it represents the gender gap in the population. According to the Census of India 2001 Haryana has the lowest sex ratio at 861. The sex-ratio in the age group 0-6 years is even worse at 820 which is second lowest among all the States in India. This is indicative of increased mortality rates and shows possibility of son preference giving the inference of the likelihood of female infanticide and female foeticide. According to the Census 2001, not even a single district in the State touched 900. Out of 19 districts five recorded less than 800. only one district above 850 and the rest between
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800 and 850. Even historically Haryana has had one of the most adverse sex ratio in the country.

Haryana is primarily an agricultural State with patriarchal social set up and has been transforming rapidly into an industrial economy. It is among India's economically more developed and educationally forward states.

For these reasons Haryana was selected for the empirical study.

Chapter I gives the introduction of the topic, its problem profile object of study, methodology and universe of study.

Chapter II delineates the retrospect of the socio-legal status of women in various stages –vedic and post-vedic. It also highlights the attributes of patriarchy and age old customs affecting the status of women.

Chapter III discusses the international endeavours and international legal framework for the enhancement in the status of women that has been recognised as a global issue.

Chapter IV highlights the population figures recorded by Census of India, 2001. It also discusses the overall sex-ratio, sex-ratio in the age-group 0-6 years and the implications of the disproportionate sex-ratio explicitly adverse to the female sex, its relation with horrendous practices like female infanticide and female foeticide by explaining them in detail. Various methods employed for these practices have also been discussed separately.


Chapter V relates to the Constitutional provisions and other laws that have bearing on the status of women.
Chapter VI further elucidates the legislative framework for the protection of women by discussing various enactments.

Chapter VII deals with the initiatives by the Government in the form of Schemes, Programmes, Five Year Plans and Policy Framework. Apart from that it also discusses the role of National Commission for Women.

Chapter VIII elucidates and discusses the findings of the empirical study in detail.

Chapter IX based upon the research, draws upon conclusions and puts forward a few suggestions for the prevention of female infanticide and female foeticide with a hope to raise the status of women.
amount of freedom in personal matters and acquired a respectable place as daughter, wife or mother in the society. Motherhood was recognised as a fundamental right of a married woman. The custom of niyoga even sanctioned a childless woman, married or widowed to have a child from a man other than her husband.\footnote{Supra note 1 at 18.}

In the later Vedic thought the principle of patriarchy was strengthened through the emergence of an all powerful trinity of Gods - Brahma representing creation, Vishnu the nurturing aspect and Shiva the destroyer of evil and upholder of righteousness\footnote{Id. at 11.} and by providing consorts to the trinity signifies the consciousness of the creative principle of motherhood. Thus the symbolism of woman as a source of life in the pre-historical era, conferred an element of security on the uncertain earthly existence. However, as described in Shiva Purana, Ardhanarishwar i.e. Shiva in androgynous form is credited for establishing gender equality. In its subtle form it manifests that Brahma created men and women as equals, representing in turn, the powerful principle of creation of purusha and shakti. They are complimentary and incomplete in themselves, if alone.\footnote{Ibid. at 18.}

The great Indian epics Ramayana and Mahabharata provide paradoxical position and status to the women despite the fact they played crucial roles in politics and economy of their countries. The leading lady in Ramayana, the wife of Rama - Sita is eulogised for ruining her life for the sake of her husband who left her alone in lurch when her chastity was being doubted. In Mahabharata, Draupadi was lost by her five husbands in gambling like any other property. The women in the great epic age were not raised to divine status. They command respect only as satis or chaste wives.

\footnote{Supra note 1 at 18.}
b. Post Vedic Period

The conditions of a woman’s life and her position in the society started deteriorating during the period of *Atharva-Veda*. In *Atharva-Veda* the birth of a daughter is distinctly deprecated and prayers and ceremonies to prevent it came into vogue.

It was prayed, “Prajapati, Anumati, Sinivali, hath shaped; may be put elsewhere woman birth, but may be put here a male.”

Charm against sterility and for assuring the birth of male children can be found in the twenty-third hymn of the Third Book. The eleventh hymn of the sixth book gives a prayer for the birth of a son and deprecates the birth of a daughter. The sixth hymn of the eight book is an incantation for the protection of a pregnant woman from evil spirits, so that they might not turn a male child into a female one.

During the period of *Atharva-Veda*, rituals, especially those concerning marriage and death developed to a remarkable degree. There is mention in the *Atharva-Veda* about a ceremonial in which food for the soul of the dead is offered through the medium of fire as cremation was the general practice. The food was offered in the belief that the souls of the dead came to eat it and thus sustained their lives in the next world. Development of this eschatological idea, the anxiety about the next world necessitated the development of an elaborate system of rituals for the salvation of soul. This growth in the funeral rites necessitated an oblation; and a son, being the nearest to the dead came to be chosen for the purpose. The importance of a son was enhanced because of the prerogative to perform these rites. Son was a necessity to ensure the welfare in the next world. Daughters came to be looked upon as a

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10 *Id* at 42.
11 *Id* at 64, 65.
12 *Id* at 66.
misfortune. However, no clear-cut instance of either infanticide or foeticide has been mentioned in the Vedic literature. Though interpretations of the European authors regarding 'exposure of daughters' deduced from a Vedic passage has been categorically opposed by Altekar.\textsuperscript{13}

c. Smriti Period

Smriti writers have regarded the destruction of an embryo as the most heinous crime. The destruction of foetus (\textit{bhrunahaty}) has been mentioned in \textit{Atharvaveda}, to have been committed by some people. God \textit{Pusan} is requested to release men from sin.\textsuperscript{14}

The diktats of Manu, compiled in a \textit{granth} '\textit{Manusmriti}' composed by him somewhere between 200 B.C. to A.D. 200 and committed to writing in twelfth century A.D. had a deadening influence on the status of Hindu women. \textit{Manusmriti}, basically laid down a Code of Conduct for the man for preservation of race, how to conduct himself in four \textit{ashrams}, about the daily living rules and the laws to be followed by the kings in providing justice.\textsuperscript{15} However, on the one hand Manu begins his book by writing that \textit{Brahma} separated his body into two parts, from half he created man and from the other part woman. She is, therefore, born equal.\textsuperscript{16} He goes further by saying Gods reside where women are respected and where they are insulted all endeavour is useless.\textsuperscript{17} On the other hand he demarcates the male and the female by showing a sheer prejudice towards the male. Manu's oft quoted dictum that 'women require care and protection from their fathers as children, from their husbands in youth and sons in old

\textsuperscript{13} See supra note 3 at 7. "They go to the final bath; they deposit pets (called \textit{sthali}, the word (sic woad) being feminine in gender), but lift up vessels for Vayu (called (sic aalled) \textit{graha}, the word being masculine in gender); therefore, they keep aside a daughter at birth, a son they lift up."
\textsuperscript{15} Supra note 1 at 26.
\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid.
age\textsuperscript{18} placed them subordinated to the males and has always succumbed the psyche of the Indian patriarchs as it suited the needs of society. He further equated 'the bull', 'the slave' and 'the drum' with the woman so as to be 'beaten hard' to get the 'best results'.\textsuperscript{19} She was not expected to remarry after widowhood where as, the husband could marry, after the death of the wife. A man could renounce a woman if she was envious of her husband, a drunkard, sick or a gambler after three months of marriage, if no issues are born or after eight years, if the issue died after birth. A man could marry after ten years and where only daughters were born to the wives, a man could remarry after eleven years.\textsuperscript{20}

B. Impact of Patriarchy and Age-Old Customs

By 500 B.C., the political and religious predominance of Aryans with the spread of Aryan Colonisation affected the language, customs, religious beliefs, practices, vedic rituals and marriage ceremonies of the Non-Aryan population, predominantly the 'Dravidians'. The concept of Kanyadan was widely accepted thus lowering the status of women. She had to sever her ties and forego her rights from the parental house and was taken as subject of charity.\textsuperscript{21} She was considered as an object to be given in dana-
\textit{i.e.} commodity for making gift.

By about 300 B.C. marriage came to be regarded as obligatory for girls and the marriage of the girl came to be compared to the upanayana of boys thus reducing the age of marriage to 13 or 14. Early marriages shattered the literary and spiritual ambitions of the deserving girls. From about 200 A.D. pre-puberty marriages became common among

\textsuperscript{18} Id. at 26.
\textsuperscript{20} Supra note 1 at 25.
\textsuperscript{21} Id. at 19 & 20.
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Brahmanas. So much so the Brahma Purana recommends girl's marriage at any time after the age of four. The ramification of the caste system into hundreds of sub-castes and the prohibition of inter-marriages among them from about the 8th and 9th century A.D. further accentuated the evil of child marriages as it limited the field of choice for the selection of a suitable bridegroom. Ironically, the custom of Sati gained popularity along with child marriage at this time.


From about 200 A.D., pre-puberty marriages became the order of the day. Parents in the lower sections of society, where bride price was prevalent, took advantage of this custom of child marriage and married off their girls at the age of 5 or 6. Later on this practice was practiced by almost all the sections of society. The popularity of early marriages went on increasing in medieval times. As a natural consequence more and more child marriages ended up in more and more child widows.

From the record of rajput families as well as the Smritis it is found that the girls were married at a very young age to preserve their purity and to keep them away from abduction by foreigners.

Child marriages were quite common in Europe also for a long time. In ancient Rome, maidens were married at the age of 10 or 12.

Child marriages but naturally ended up in more and more child widows. In the medieval times the child marriages increased.

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22 Supra note 3 at 33, 34 and 58.
23 Id. at 59.
24 Id. at 59, 60.
25 Id. at 56.
26 Id. at 59.
27 Supra note 1 at 30.
28 Supra note 3 at 64.
b. **Practice of Sati**

As a natural consequence of deterioration in the status of women created slavish conditions which gave birth to bizarre custom of *Sati*, that further reduced women to physical, mental and spiritual slavery by men.

According to J. Peggs, it is possible that this practice may have originated in a mistaken idea of the import of the injunction of the *Shastras*, addressed by the priest to the bride in marriage. "Be thou the companion of thy husband in life and in death" --- or from the following passage from the *Rigveda* - "Let those women, no longer widows, excellent wives, anointed with collyrium and ghee, enter, without tears, without complaints, excellent jewels, let them ascend before the source of beings."29 Lack of clarity in these verses renders it dubious to conclude that *Sati* custom was recognised as ritual in the *Vedic* period. The *Vedic* age rather expected the widow to remarry than to immolate herself.32 However, this horrid practice finds place even today in some communities.

The practice of *Sati* was mainly a medieval development and began to have appreciable effect on Society after 1300 A.D. Sanctified by long tradition and encouraged by *Brahmins*, the practice was firmly established as an integral part of Hindu social system in the Medieval period. Amongst the *Rajput* families the custom became firmly established.31 Muslim administrators did not like the custom. *Sati* continued to be practiced though Akbar, Jahangir and Aurangzeb banned this custom.32

It can be presumed that *Sati* existed in some form in the pre-*vedic* period. However, the evidence from the scriptures does not support the prevalence of the custom. The writers of early *Smritis* like *Manu* and *Yajnavalkya* (100 A.D. to 300 A.D.), the greatest scriptural authorities,

30 Supra note 3 at 118.
31 Id. at 131.
32 Supra note 1 at 30.
have laid down specific rules on the duties of widows. References to the incidents of Sati occurred in Mahabharta.  

Besides India, the custom of Sati was practised in ancient times in Europe, Central and Western Asia and Far East. There is early evidence that Sati was prevalent among the heathen Russians on the Volga, the Teutonic tribes, Heruli, Getae, the Scandanavians, Thracians in Greece and Scythians. It was also practised among the tribes in the Tonga and Fiji Islands. The Egyptians and the Chinese also practised it. In India the Brahmamic influence gave religious sanction to this pernicious and horrid practice and the custom strengthened its roads in certain communities. The prevalence of this barbaric practice even in the twenty-first century is the evidence of rigid atavistic mindsets - not open to positive changes. Due to the ambiguities in tracing the origin of Sati, it is not strictly attributable to any period but generally the devalued life of the widow was considered to be frivolous and such perception gave impetus to this horrendous practice. This incident hogged the limelight in the media. Even today such incidents take place in Rajasthan, Madhya Pradesh and U.P. and are not a rarity and many widows are reduced to ashes silently.

c. Practice of Dowry

With the passage of time the dowry system emerged as yet another social evil. In the early societies, and also among ancient Hindus, dowry system was generally unknown. There is no reference in Smritis to the dowry. However in rich and royal families some gifts used to be given to sons-in-law at the time of marriage voluntarily and purely out of love and affection.

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34 Id. at 2.
35 See Chapter VI for details.
36 Supra note 3 at 70.
In the Medieval times and Rajputana, the dowry system assumed alarming proportions. The main reason behind this development was that the Rajputs took extraordinary pride in their ancestry. From about 13th or 14th Century A.D. it had become a positive evil of great magnitude in Rajputana but was not practiced in the ordinary families to the same extent.37 Gradually the dowry system has now become common in all sections of the society and has maligned the religious sacrament of marriage. Marriages are weighed against the amount of dowry. This has given rise to more and more dowry deaths, thereby increasing violence against women.

Dowry though prohibited by law, has grown to monstrous proportions after four decades of legislature.38

d. Infanticide

Preceded by the evil of dowry another barbarous practice of female infanticide arose out of it. Fact of prevalence of this practice is dubious during the post-vedic period because of the ambiguity of the available material.

If `Sati` is a bizarre culmination of cultural values ramified by scriptures, religious beliefs and superstitions, dowry and deaths due to lack of dowry are the curious but terrible products of their interaction with a rigid social structure based on caste and sub caste groups integrated through joint families and kinship groups.39 Right from birth daughter is considered as other man’s property. In today’s world, materialism and lust for power have eroded every human value. These obsolete customs of `Kanyaadan’ and dowry have brought about such untold miseries that they are wracking life of innocent young girls to agonising human tragedies of death.40

37 Id. at 71.
39 Sushila Mehta, Revolution And The Status of Women In India at 207 (1982).
40 Id. at 210.
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The ancient history generally reveals the subordinate status of women throughout the world. In Rome the rule of a husband over his wife was despotic. She was treated at par with slaves and did not possess any share in social economy. The husband had the right even to kill her. Polygamy was not unknown in Rome.41

In Sparta, female infants and such women who could not be expected to give birth to healthy sons were often destroyed. As a consequence the proportion of women was reduced and one woman had several husbands. The loan of the wife of one man to another to get a good "breed" was also permitted.42 Athenians treated women marketable property and could be transferred from one to the other. She could even be willed away.43 Woman's position is half of man's in the Quran. Whereas in China of the Middle Ages it was believed that it was better to have a dog than a daughter'.44

Rabbinism teaches that to be a woman is a great degradation.45 In Judaic system woman is treated like a chattel and can be inherited.46 A Jewish writer has declared that badness of men is better than the goodness of women.47

In the 18th and 19th centuries the position of women was pathetic, especially in India. With the passage of time such engrained beliefs cumulatively resulted in subjugation of women to male domination that started at home in the form of patriarchy and gave them secondary, submissive and dependent roles thereby curtailing their independence,

42 Id. at 6.
43 Ibid.
44 Supra note 19 at 24 (2001).
45 Supra note 41 at 13.
46 Id. at 14.
47 Id. at 16.
self-expression and freedom. The concatenation of such deemed values of patriarchy had virulent repercussions on the life of woman. She was reduced to a domestic drudge.

C. Development During Nineteenth Century

The nineteenth century came to be a turning point in the history of women. The history of revolutions in many countries like U.S.A., France, USSR, China and India, where political revolution led to marked changes in political structure which in turn led to socio-economic changes. This played positive role in enhancing the status and position of women in society.

In India both political and social movements had great impact on the lives of women. The change in country's polity exposed Indian conservative and orthodox populace to the open ways and lives of the West. By the time of British rule various social evils had pervaded the Hindu Society. The stark cultural difference but naturally attracted attention of the Britishers towards peculiar, unusual and unjustifiable practices and customs of the Hindus, specially infanticide and Sati. They found murder of widows contrary to reason and revolting to humanity.

Broadly, the British Government adopted the policy of religious neutrality or religious toleration that was motivated by considerations of political expediency. In 1805, first attempt was made by the Government to examine the question of policy on Sati. During the Muslim rule the custom of Sati was invariably practiced among Hindus.

The Mughals disfavoured Sati and took steps to deter the women from burning themselves. The Mughal policy was to insist on government permission and was further strengthened by the Emperor's intervention.

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48 Supra note 33 at 26.
49 Id. at 23.
Akbar and Jahangir were against the practice of Sati. However, there was no general prohibition of this practice.\footnote{Id. at 14.} Lord Amherst singled out the following reasons which made it difficult to initiate a strong policy: (1) the difficulty of gauging the fanatical spirit of Hindus who observed the practice of Sati (Suttee) with tenacity, (2) the force of enlightened Hindu public opinion in Bengal which was not yet sufficiently advanced to recognise the propriety of abolishing the rite, and (3) a fear of shaking the confidence in British rule which had been inspired due to the scrupulous regard the British paid to the Hindu sentiment by their policy of religious neutrality.\footnote{Id. at 48, 49.}

Lord William Bentinck, the Governor General of India was stirred to action by seeing the prevailing social situation in the country. He had faith in omnipotence of education and legislation. He welcomed the Reform Act of 1832. He demanded that the modern world should not be crushed under the weight of ancient and medieval past.\footnote{Id. at 89.} Bentinck wanted to deal with the Sati question with utmost caution. He was not in favour of public discussion of the subject because he rightly apprehended the whole public press to be injudicious.\footnote{Id. at 93.} Bentinck was a Utilitarian and for him Sati was an abomination.\footnote{Id. at 90.} Consideration for humanity mattered to him more and he decided not to follow a wicked and selfish policy and be "guilty" of little short of the crime of multiplied murder. He knew that 'self-correction' on the part of Hindus by discipline and education would not help.\footnote{Id. at 102.}

Bentinck passed Regulation XVII on 4\textsuperscript{th} December 1829 declaring the practice of Sati or burning or burying alive the widows of Hindus,
whether the sacrifice be voluntary on her part or not, illegal and punishable by the Criminal Courts.\textsuperscript{56}

Bentinck was the real architect of the policy on Sati and the decision to abolish it was his and his alone. The Government was lacking in will though it had the power to abolish the rite, whereas a strong group of officials had the will but not the power, but Bentinck had the combination of power, will, energy and courage.\textsuperscript{57}

Bentinck was successful in washing out a foul stain on British rule and acted as a true legislator of the Hindus and as a true administrator: enlightened, despotic and rational, in the immediate abolition of Sati.\textsuperscript{58} Bentinck's innovative and rational thinking and his daring decision of prohibiting Sati has immortalized him forever.

Ram Mohan Roy, well known by his luminous examination of the Hindu Theology and Philosophy was the first one among his contemporaries to initiate crusade against Sati. He was a man of liberal ideas. He had great veneration for the ancient heritage of India, but because of his futuristic vision he was of the view that for the intellectual and moral advancement of India it was necessary to enrich Indian culture and society by the introduction of Western learning and sciences. He condemned the practice of polygamy in Bengal, which had been tolerated on account of "restraints of female inheritance."\textsuperscript{59}

In 1818, he printed and widely circulated a tract in Bengali language aiming to dissuade his countrymen from the practice of this horrid rite and subsequently published a translation of the tract in English.\textsuperscript{60} Advocates of Sati defended the practice by involving the rulings of various Shastras.

\textsuperscript{56} Id. at 105.
\textsuperscript{57} Id. at 102.
\textsuperscript{58} Id. at 103.
\textsuperscript{59} Id. at 121,122.
\textsuperscript{60} Supra note 29 at 30.
Ram Mohan dispelled the ambiguity that prevailed in people’s minds about the religious sanction of Sati. His tracts were marked by his scholarly comprehension of the subject, firm grasp of the textual authorities and sobriety of judgement. He came out with a counter-defence against the protagonists of Sati pointing that "ascending the funeral pyre" was not the only course prescribed, but that asceticism being mentioned first in order was the most pious conduct for a widow to follow. To him Sati was an act of inferior kind. So convincing were his arguments that Lord Bentinck used his interpretation of ancient Hindu text to strengthen his case for the abolition of Sati.

He founded the Brahmo Samaj in 1825. Besides Sati, he spoke against early marriage of girls and in favour of monogamy and widow remarriage. Rammohan Roy was followed by another leader Keshav Chandra Sen, also of Brahmo Samaj, who carried this cause further and initiated a movement in Bengal against Child marriage and advocated 14 and 18 years of age respectively for girls and boys for marriage. He emphasised the need for education of women for improving their social position. Largely because of his initiative and efforts the Widow Remarriage Act, 1856 was passed.

Ishwar Chandra Vidyasagar was touched by the cruel custom of penalising child widows and campaigned tirelessly against it. To his credit are his efforts for widow remarriage and female education. He was totally against polygamy.

In 1875, Swami Dayanand founded the Arya Samaj which was instrumental in a forceful movement propagating better status for women.

61 Supra note 33 at 124.
63 Supra note 1 at 39.

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It preached against child marriage and polygamy and made efforts for spreading female education.

The Christian Missionaries also had their bit to contribute to cleanse the Hindu society from the evil practices. The missionaries promoted education by opening separate schools for girls.

The most important contribution of the Baptist missionaries was that they aroused public opinion against the practice of Sati through their publications. For them Sati was a murder, scene of unparalleled turpitude which, according to them violated the first principle of the law of preservation by destroying the mother of the family. They viewed Sati as an act against God and Nature.64

The influence of the missionaries on the abolition of Sati was indirect but it played a significant role in changing attitude of people against the rite.

Slayer of a woman is equated with the slayer of a priest in our Hindu Mythology.65 Quite oblivious of such edicts the patriarchs embark upon only those Hindu religious edicts that form the basis of repression for Hindu women. Such edicts emerge from a social, political and economic patriarchal system.

The Hindu personal laws, with economic, spiritual, political and social advantages, are bent more heavily towards males than females. This is one perpetuating factor for son preference. Son preference is further 'sanctified' by Hindu religious edicts that favour birth of sons. Violence against women, in multifarious ways, is, indirect if not the direct result of these edicts.

Low value accorded to females is deducible from such scriptural edicts. The 'sanctity' of son preference gets impetus from the engendered

64 Quoted in Supra note 33 at 77.
65 Supra note 29 at 143.
Hindu religious edicts favouring birth of sons. Such latently biased edicts have negative effect on the women, which is manifested in acts of violence against them in multifarious ways. Thereby inferior status is accorded to women in our society. The vicious circle continues without questioning the patriarchal set up. Justification for the same lies in maintaining the culture and thus bolstering the cultural stereotypes.

Such laws together with biases serve indirectly to reinforce other culturally oppressive aspects associated with the females; as sexual exploitation, sati, infanticide and so on. Resulting in emasculation of fundamental freedoms of the females, the atavistic attitudes towards women permeate the society.

From time to time efforts have been made to overcome such attitudes and adopt progressive thinking. The contribution of the honest efforts has so far steered us till a point, from where, if we look back, we can see that much has been done but much more needs to be done.