CHAPTER-7

CONCLUSION

The study of rights of Hindu women was undertaken with a view to finding out their emerging problems and status to enjoy their rights. It has also focussed on the role of the state and Indian Courts in improving the legal rights of women in personal matters. The study reveals that Hindu women's rights are not only constrained by a uniform set of patriarchal norms but are also shaped and moulded by several social, economic and political currents. Historical exploration was also undertaken to measure the nature and scope of law reforms.

After examining and analyzing the issues pertaining to the Hindu women, it is justified to draw the conclusion that the place of women in every community is vital to the well being of the society. In ancient India during the Vedic period, women were highly educated and perfect scholars of Vedas. Women as daughters, sisters, wives and mothers had an equally honoured place in the family, society and state alike. Like their brothers the girls wore the sacred thread and used to pass through a period of Brahmacharya. After that the Vedic woman carried on the study of Vedas.
The marriage of girls used to take place at the age of understandings i.e. between 14-17 years. The educated girls had naturally an effective voice in the selection of their life partners. Pre-puberty marriages were unknown. The position of Hindu women during this period did not suffer much from authoritative interference. She was socialized with high degree of modesty. She was expected to have tolerance, patience, submission to and an identification of her personality with her husband's. She in turn, received affection, consideration and regard. Her position was an honoured one in the family. Her social status is not only that of a loving wife but also of a loving mother. She enjoyed absolute equality with men in matters of religion. Widows were permitted to remarry. Any reference to Sati or burning of Widows was not found in Rig Veda. The position of women was found satisfactory, they enjoyed equal rights and other facilities as compared to men. One can observe that women occupied higher place in the society during the ancient period.

But during the post Vedic period, there were perceptible changes in women's status due to various reasons, among which important reasons were the denial of education and the lowering of the marriage age. It reached its peak after the Mughal invasion. The purdah system stood in the way of girls beyond a certain age being sent to school. Widows were ordained to lead a strict ascetic life. During the 11th century the cruel
custom of sati was widely practised. Because of the lack of educational knowledge they became unfit to participate or perform any religious duties. The women became dependent on men. Her duty was only to produce son for offering pind to the deceased forefathers. Thus, unjust and stupid social custom like child marriage, Sati and polygamy reduced the status of women to the level of mere goods or cattle. Uneducated, marriage before their characters were fully developed, transferred from the loving and sympathetic atmosphere of the parent’s house to the house of parent-in-law where an atmosphere of apprehension of suppression prevailed frequently forced Hindu women into such lower status.

The position of Hindu women improved during the British period. Mere traders to begin with, the British did try to improve their image by issuing directions. The British introduced female education in India. Although only a small section of women took advantage of these measures and privileges given, their initiation was indeed significant. During India’s struggle for independence, thousands of women took part. Another development took place, quite indirectly -- the higher class imported the western ideals of liberty and democracy to India. Due to the principles of democracy based on liberty, a Hindu woman’s role began to change towards greater emancipation from man’s domination. Due to efforts of social legislations, women were brought out of the confines of their homes.
The ghastly practices like "sati" and "child marriages" were sought to be banned. But personal laws were a subject the British were afraid to touch, considering India's varied communities.

The Pre-British era did not have a uniform Hindu law, as the authority of different commentators as well as different custom led to great diversity. Two major schools developed, Dayabhaga and Mitakshara, which were again divided into Sub-schools. The British authorities left them untouched. They were so afraid that interference may lead to repercussions which may be ruinous to the stability of their empire in this country. This attitude provide a further obstacle in adjusting law to changing requirements. The social reformers, finding the attitude of the rulers to social legislation, turned their attention to the spreading of education. This they hoped, would lead the people particularly women, to realise that the laws and customs need to be changed. Pandit Nehru realised that women had an inferior status because the law favoured men. Efforts to codify Hindu law started as early as 1920s. All India Women's Conference (AIWC) also demanded codification on equal rights basis. Rau's committee constituted in 1941, issued its report advocating codification of the Hindu law. The codification received stiff opposition of the conservatives who were afraid that these so-called liberal laws would encroach on old Hindu ideals.

But the proposals of the Rau Committee were kept in cold storage by the British Government. Mahatma Gandhi and Nehru with strong group of educated Hindu influenced by Western liberal ideas demanded that

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1 Rama Mehta, Socio- Legal Status of women in India, op.cit. p. 158.
entire Hindu law should be overhauled. After independence, Nehru decided
to bring forward the Hindu Code Bill which aimed at removing the legal
disabilities of Hindu women. When the Bill was presented in the National
parliament, it was strongly opposed. But Nehru did not move from his
stand. It was decided to pass the Hindu Code Bill in various parts viz, The
Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Hindu
Adoptions and Maintenance Act, 1956; The Hindu Minority and
Guardianship Act, 1956. The changes that have been brought about by
these enactments are revolutionary in Character. The Hindu woman today
stands freed to a considerable extent of her traditional fettered and
dependent status.

The Hindu Marriage Act, 1955 makes monogamy the rule both
for men and women. The evil custom of polygamy was given a mortal
blow. Full equality of sexes can hardly be possible in a legal system which
permits polygamy and a social system which tolerates it. Though the
institution of Polygamy has prevailed traditionally in India in the last five
or more decades, most marriages are today monogamous. A.M.
Bhattacharjee said that in respect of the provisions of the then Hindu law
(before passing Hindu Marriage Act 1955) which permitted plurality of
wives but prohibited plurality of husbands, that is, which prescribed strict
monogamy for the women but uncontrolled polygamy for the men, I do not
think that there should be any scope for any doubt that the provisions were at once hit and struck down by Article 15 of the constitution. It would be extremely difficult to conceive that polygamy for men could be permissible under Article 15 because polygamy for men not only discriminated in favour of men, but each act of polygamy would be prejudicial to the interest of the women who would thereby be compelled to share the person and the property of their husbands with co-wives.\(^2\)

Polygamy proclaims the inferior status of the feminine sex. The woman is not recognized as equal partner of a man. Clause (i) of Section 5 of the Hindu Marriage Act 1955 introduces monogamy which is essentially the voluntary union for life of one man with one woman to the exclusion of all others. The general rule of matrimonial law is that a party to a void marriage is entitled without recourse to any court to marry anyone else because that particular marriage is not in law a marriage at all. A person who is an innocent party to a bigamous marriage may go to a court for a declaration that the bigamous marriage is null and void.

The offence of bigamy is committed if a person marries again during the lifetime of his or her spouse. And it is punishable under Section 494 of the Indian Penal Code. But according to Section 17 of the Hindu Marriage Act 1955, to prosecute the husband for the offence of bigamy, it

insists on the proof of solemnization of both the marriages. If the first marriage was void then the second marriage would not be a bigamous one. And if the second marriage was not validly solemnized then again the offence of bigamy would not be proved. “Solemnization” means observance of all the necessary customary and shastric ceremonies by the parties. In practice, the second marriage during the subsistence of the first marriage is rarely performed with the usual show. It will be done secretly, mainly in the presence of those very near close relatives or friends who have been taken into confidence and are aware of the first marriage. At the time of prosecution, the husband has himself taken the plea that the essential ceremonies were not performed and therefore, the second marriage was void. It is extremely difficult to prove bigamy and punish the guilty because of the application of this validity test of the marriage under Hindu Marriage Act. Therefore, Many Hindu women hesitate in approaching the court and have no alternative but to live in a life of misery with the bigamous husbands or to obtain either divorce or judicial separation.

Undoubtedly, child marriages popular in the past, and still not uncommon in India are a major social evil leading to a disastrous effect on the young Hindu wives. Efforts for legal prevention of child marriages began since 1929. Child marriages began since 1929. Child marriages have
more serious effect on girls than boys more so on their physical and psychological health and on education and other opportunities and on their personality development. Clause (iii) of Section 5 of Hindu Marriage Act age fixes the age of the bridegroom to complete 21 years and 18 for the bride. But any marriage solemnized in contravention of this clause is neither void nor voidable, the consequence is that the persons concerned are liable for punishment under Section 18 of the Act.

In Hindu society, women suffered from various disabilities. They were victims of many practices some of which have already been discussed. In ancient India, the right to separation, annulment of marriage and divorce was not available to women. In Hindu society, marriage was regarded essentially as indissoluble institution. The social reformers were, therefore, actively engaged in devising ways and means to remedy the situation and arm women with certain rights. The Hindu Marriage Act 1955 introduced radical changes. It, for the first time, gives all Hindu women specific matrimonial remedies and introduces a new basis for the matrimonial law of the Hindus. It incorporated the concept of restitution of conjugal rights, judicial separation and divorce. It brought to an end the indissoluble concept of a Hindu marriage.

It is a general rule that each spouse is entitled to the society and comfort of the other and if any spouse, without any reasonable cause,
leaves other spouse, the latter can move the court for a decree of restitution of conjugal rights. The primary aim of the decree of restitution of conjugal rights was restoration of marital relations. It is a judicial remedy given to spouses with strained relations to come back, live together and give their marriage another chance.

The present economic conditions and the changed social outlook have made many women to take up jobs. This career orientation of women has often led to an inter-spousal conflict relating to the place of residence and also the control of the salary of the women. This matrimonial remedy is available to both the spouses, but a suit for restitution by the wife is rare. The bulk of litigation commences from the husband. In the Hindu society, wife’s first duty to her husband is to submit herself obediently to his authority and to remain under his roof and protection. She, therefore, has to prove that her living apart from him was either by reason of his misconduct or his refusal to maintain her at his own place. Indian courts in majority of cases have imposed a legal duty on the wife to resign from her job, join the husband and give him conjugal company at his residence. That she will be financial dependant on her husband is of no consequence.
Even though the wife wants to defend she has to prove misconduct or cruelty of the husband. Again what conduct amounts to misconduct or cruelty has to be judged by the courts.

Divorce was the most radical social reform. The dharmasastras did not recognise divorce. The concept of sacramental Hindu marriage was viewed as a fetter binding the feet of those helpless Hindu women who faced tremendous odds when their marriage was not workable. Marriage is a very tender and delicate relationship between two persons, and very often the level of understanding, mode of thinking, liking and disliking differs and gives rise to unpleasant conflicts necessitating their separation. Judged from this viewpoint, divorce granted by the Hindu marriage Act, 1955 truly came as a great relief to Hindu women.

But the law did not work well in actual practice since few women could avail of the legislation granting divorce. Keeping a variety of factors in view, Hindu women of India continue to suffer the consequences of unhappy marriages. One important factor preventing women from availing the benefit of divorce is the social attitude, for even today, society looks askance at a woman who has left her husband's home. Moreover, few parents welcome their distressed daughter back, so women are often at a loss about where to go after leaving their husbands. Apart from these, valuable years of young individuals are wasted in slow, tardy and long
drawn legal processes. While a limited minority of urban women could avail of the opportunities provided by law like divorce, the vast majority of rural Hindu women continue to stay in misery. Their ignorance, illiteracy, social attitude, lack of awareness as well as pecuniary difficulties deprived them of any benefit from such reforms. Hindu Marriage Act, 1955 provides grounds for obtaining divorce. But what conduct of the respondent would amount to one of the grounds of divorce is to be decided by the courts. Judiciary has important role to play in such situation to bring about an interpretative justice. It has to play an effective role to bring about a just and equitable result between the quarrelling spouses.

The obligation of the husband to maintain his wife arises not out of any contract, manifest or implied, but out of the status of the marriage. Apart from the right given in the personal laws the Criminal Procedure Code, 1973, also provides for right of maintenance. Under old Hindu law wife’s right of maintenance is absolute and the husband can not claim inadequate means to deny maintaining her. But she loses her right if she deviates from the part of chastity. Hindu Adoption and Maintenance Act 1956 provides provisions for maintenance, perhaps keeping in wife’s dependent status. Hindu Marriage Act 1955, in contrast makes a departure, where both husband and wife can claim maintenance from each other. In Indian context this is questionable. But Section 125 of the criminal procedure code, on the other hand, the provision of maintenance applies
only against husband. The right of married Hindu women and divorcees have continued to be confined to the right of maintenance. The concept of maintenance also envisages a sexually pure woman, both within marriage and after divorce. Where a Hindu woman is entitled to maintenance, the extent she is entitled to claim is not only subject to the limitations imposed by the laws but also the decision of the judge (Court). The amount varies from case to case and is calculated on the basis of the income and liabilities of the parties. A complete survey of the financial conditions of the parties is necessary. On the question of granting maintenance, the judiciary has to play a very enlightened role.

In the Vedic period, the status of women was better than in the subsequent period. After marriage she was regarded as a part of her husband and her presence was inevitable in every religious function. Despite the fact that the husband and wife were regarded as joint owners of the household according to Vedic texts there was no instance where wife’s proprietary rights were separately recognised. The wife had right to maintenance under joint ownership. The Vedic literature prescribed inheritance to the brother less daughters. However her right to own stridhana was recognised. The Hindu women’s Rights to Property Act, 1937 made a revolutionary change in the Hindu law. It included certain widows in the list of heirs. But it did not amend Hindu law of inheritance in general.
Hindu Succession Act 1956 reformed the Hindu personal law of inheritance and gave Hindu women greater property rights, allowing her full ownership rights instead of limited rights in property. It removes the distinction between the Mitakshara and Dayabhaga rules of inheritance and lays down a uniform and comprehensive system of inheritance. It removes the distinction between the son and daughter in the matter of their right to inherit the property, the share to be allotted to them and the nature of the property they obtain. The Act makes the widow entitled to succeed not only to her husband’s separate property, but also to his interest in the coparcenary property. Section 14 of the Act abolishes the principle that runs through the estate inherited by the female heir, namely, that she takes only a limited estate and provides that whatever property is inherited by a woman, whether it be from a male or female by whatever school she is governed, is now to be taken by her as an absolute owner. It has been used as a tool to elevate her to equal status with men. The entire concept of limited ownership stands converted into absolute ownership. Rules of succession to her property have been made simpler, unambiguous and uniform under the Hindu Succession Act, 1956. This not only leaves much less scope for exploitation of uneducated women, but also secures a safe future for their property in accordance with the letter of the law. It is a tool to elevate her to equal status with men and put her on par with men as far as dignity of person is concerned.
Section 14 of the Hindu Succession Act not only enlarges the concept of *stridhana*, but also brings it under the purview of equality clause of the constitution of India and gives it a validity that it did not enjoy before.

In 1956, when the Hindu Succession Act was passed, though more property rights were given to the Hindu women, but in some of the provisions discrimination against women was also legislated. This was particularly because of the incorporation of the discriminatory concept of Mitakshara coparcenary in Section 6 with only males as coparceners, and the disability with respect to the daughter’s right to demand partition of the inherited dwelling house under Section 23 of the Act.

Thus ancestral property continues to be governed by a wholly patrilineal regime as only male members of a Joint Hindu Family have an interest by birth in the coparcenary property. Since a woman could not be a coparcener, she was not entitled to a share in the coparcenary property by birth. According to the proviso to Section 6, if the deceased coparcener has left a surviving female relative specified in Class I or a male relative specified in that class who claims through such female relation, the interest of the deceased in the coparcenary property shall devolve by testamentary or intestate succession under the Act and not as survivorship. But a son’s
share in the coparcenary property in case the father dies intestate would be in addition to the share he has on birth.

The Law Commissioner, for recommendations under the chairmanship of B. P. Jeevan Reddy on the removal of anomalies, ambiguities of property rights of Hindu women under the Hindu Succession Act 1956, had taken up the subject sue motu. Thus the Law Commission of India submitted its 174th Report. This report contributed to overcoming the oppression of women by creating a legal order for Hindu women on equal footing. Hindu succession (Amendment) Act 2005 was passed by both houses of Parliament and came into force from 9th September, 2005. According to the amending Act of 2005, in a joint Hindu Family governed by the Mistakshara law, the daughter of a coparcener shall, also by birth become a coparcener in her own right in the same manner as the son heir. She shall be subject to same rights and liabilities and disabilities in respect of the coparcenary property as that of a son. Section 23 and 24 relating to rights in respect of dwelling house and the disentitlement rights of widow's remarrying, respectively were omitted by this Amendment Act of 2005. This Amendment Act of 2005 also in the Schedule of Hindu Succession Act added some new female heirs. This Amendment Act of 2005 is a total commitment for the women empowerment and protection of women's right to property.
Hindu law of adoption has been amended and codified and brought in line with the principle of social justice by passing the Hindu Adoptions and Maintenance Act 1956. Adoption is one of those fictions of law. The law of adoption enables a childless person to make somebody else’s child as his own. Previously the object of adoption was to ensure spiritual benefit by performing the religious rites and also to continue the line. It was because of this basic approach to adoption that Hindu law did not recognize the right the adopt girls she could neither ensure spiritual benefit nor continue the line of her father. With the passing of the Hindu Adoptions and Maintenance Act, 1956, the whole basis of adoption has been changed. A Hindu can now adopt either a son or a daughter. Before the Hindu Adoptions and Maintenance Act, 1956 a Hindu male had the full authority for adoption. He may give or take a child in adoption. His wife had no right to prevent her husband from doing so. A husband was entitled to adopt a son not only without consulting his wife, but even in spite of her opposition. Now according to Section 7 of the Hindu Adoptions and Maintenance Act, 1956 a Hindu male who has a wife living and not disqualified as per the provision of this Act, shall not adopt a child without the consent of his wife. If a Hindu husband has more than one wife living at the time of adoption, and all are qualified, the consent of all the wives is necessary.
Under the old Hindu law i.e. before passing Hindu Adoptions and Maintenance Act 1956 the right of a Hindu woman to adopt a child was not recognised even though a Hindu widow could adopt but as an agent of her deceased husband. But now under the Hindu Adoptions and Maintenance Act, 1956 a Hindu widow who is sound mind and major can adopt a child for herself in her own right. Consent of her husband or his sapindas is not necessary. A Hindu woman who is unmarried, divorced can now adopt under the Act. Similar right is also conferred on a married woman if her husband has completely and finally renounced the world, has ceased to be a Hindu or has been declared by a competent court to be of unsound mind.

But a marriage Hindu woman, whose husband is living and not disqualified as per the provisions of the Hindu Adoptions and Maintenance Act, 1995 is still not entitled to adopt a child. She is merely a consenting party when there is adoption by her husband.

Regarding the power of giving a child in adoption, under the old Hindu law the father had full and absolute power to give the child in adoption even against the will of his wife (child’s mother). The mother however could not give her child in adoption without the assent of her husband while he was alive.; But after the death of the husband she could give her son in adoption in the absence of express prohibition by her husband. Now according to Section 9 (2) of the Hindu Adoptions and
Maintenance Act, the father can not give the child without the consent of the mother of the child provided that she is not suffering from any disabilities under Section 9 (3). The mother of the child now gives her child in adoption when the father is disqualified as per the provision of the Act.

The right of adoptions is still now not equally available to the husband and the wife.

The framers of the Indian Constitution were aware of the problems relating to emancipation of women in India. They realised that sex-equality was a paramount necessity for national development. Therefore in order to eradicate discrimination and inequality and to provide enough opportunities for the exercise of human rights and claims, it was necessary to promote the interest of women to protect them from neglect and injustice. Article 14 of the Constitution ensures equality of status to all men and women. The right to equality is further strengthened in Article 15. Article 15 prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. But the state could make special provisions for women in order to become better the pathetic position of women in which they had been put by the society. This will not amount to violation of equality clause or non-discrimination provisions.
In Part-IV the Constitution lays down some Directive Principles of State Policy which are not enforceable like the fundamental rights but otherwise they are declared to be fundamental in the governance of the country and Article 37 further says that it shall be the duty of the state to apply these principles while making laws. Some of the Directive Principles are directly concerned with improving the conditions of women. Constitution of India embodies a system of ultimate values which the state is intent on implementing. Since the values desposited in the constitution of India have Supreme legal status, their implementation in the interest of gender equality requires the restriction of other religious value and practices which might otherwise also have constitutional protection. Article 44 of the Constitution has cast a duty on the state that it shall "endeavour to secure for the citizens an uniform civil code throughout the territory India. Hence it is necessary to replace the various systems of personal laws by a uniform civil code. Towards this goal parliament codified laws relating to Hindus. However, no further steps were taken for enacting a civil code for all Indians. Its particular goal is towards the achievement of gender justice. Hindu males are now bound by the rule of monogamy. And a Muslim male is permitted conditionally to marry as many as four wives. Hindu husband who wants to enter into second marriage while the first marriage is subsisting has to become a Muslim. Which is very much injustice to the legally wedded first wife. In such situation Indian judiciary plays important
role to bring about any kind of an interpretative equality and to import justice to Hindu women. But piecemeal attempts of courts to bridge the gap can not take the place of a common civil code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.

Gender equality is one of the basic principles of our Constitution. The original provisions in the Constitution have been further strengthened by the addition of a new part on fundamental duties as Part IV A. It is a duty of every citizen of India to renounce practices derogatory to the dignity of women (Article 51 A (e). But still legal discrimination in many forms still persists. Legislatures are no doubt the law makers but the courts are the final interpreters of those laws. Sometimes they supplements the law by filling up the gaps or omissions left out by the legislatures. Sometimes they provide a new and dynamic meaning to give more importance to the spirit of law. They have tried to interpret laws in a manner which enhances protection to women and eliminates discrimination against them. In the historic judgement in *Githa Hariharan Vs Reserve Bank of India.* Supreme court held that the mother can act as a natural guardian even when the father is alive.

Thus, from the above study, it leads to find out that women’s role in society and women equality can not be achieved unless they are given the chance of having adequate educational knowledge. Early

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2. *AIR 1999 SC 1149*
marriages is an obstruction to enjoy equal rights and other facilities by women as compared to men. A Hindu wife after divorce is allowed her permanent alimony under Section 25 of the Hindu Marriage Act, 1955, but one of the obvious needs of a divorce woman is the need for shelter.

The permanent alimony should be only monetary maintenance and no immovable property is given. She is not given any share in the family property. A Hindu woman has a right to own and dispose of her personal property without any control from the husband. In the socio-economic situations prevailing in our country, the contribution of the wife to family's economy is not recognised. A woman's contribution in the acquisition of family property is not still evaluated in the terms of contribution. So, it is necessary that legal recognition should be given to the economic value of the contribution made by the wife for the purpose of determining ownership of immovable property. A child can be adopted by a married Hindu male with the consent of the wife. Hindu wife has also to be given equal right to adopt a child with the consent of the husband. It is also necessary to make uniform civil code applicable throughout India and to all the citizens of India. It will help to give justice to Hindu women. It can strive to realise the vision which is enshrined in our Constitution.