PREFACE

Status of women in different societies of the world is different. Whether it is developed, developing or under developed society women occupy a unique position. In almost all the present and contemporary societies it is discriminatory and prejudicial. Women are found in chains everywhere, denied basic rights because they are tied down by inequitable system of governance, by traditions, cultures and beliefs based on unjust or inequitable distinctions between men and women. It becomes important to analyse the factors which deny women their basic rights and how these rights can be enforced in the context of our culture and society. The major area of discriminations for women however, remains in the area of personal laws. Despite laws and liberal interpretation of these laws women continue to suffer from serious family and social handicaps reflected in practices. Gender-bias, in its various forms, prevents millions of women from obtaining education and enjoying legal rights. Illiteracy denies women to enjoy the rights and opportunities even though laws provide many rights and privileges. The fact remains that women are yet to achieve equality of status in society with men.

The United Nations Organisation passed various instruments with a focus on women’s emancipation and with the object of enhancing the
dignity of women all over the world. For women, the emphasis has to be on eliminations of discrimination. That is why women’s human rights have been set out in a document “The Convention on the Elimination of All Forms of Discrimination against Women” (adopted in 1979). The convention has twin objectives, viz. to prohibit discrimination and to ensure equality.

India has ratified “The Convention on the Elimination of All Forms of Discrimination against Women” on 9th July, 1993. In India, the constitution makers while drafting the Constitution were sensitive to the problems faced by women and made specific provisions relating to them. The Constitution of India protects women against discrimination by providing in Article 14 for equality before law and equal protection of laws. Article 15 prohibits discrimination by the State against any citizen on the ground inter alia of sex. It also provides for special provisions being made in favour of women and children.

This research work is undertaken to study the rights and status of Hindu women and their emerging problems to enjoy theirs rights provided by their personal laws. Law is an important institution as it regulates and controls almost all aspects of our lives. Family relations in India are governed by personal laws. Hindu personal law has been extensively reformed. Hindu women have gained new rights but not complete equality.
The struggle for Hindu women’s right has historically been a struggle for reform of Hindu personal laws. The demand for changes in personal laws went hand in hand with the demand for social reforms and improvement in the status of women.

The burden of securing rights of Hindu women was almost on the shoulder of the judiciary. Judiciary has also tried to interpret laws in a manner which enhances protection to Hindu women and eliminates discrimination against them. Traditional attitudes and customs however die hard. Despite laws and liberal interpretation of these laws women continue to suffer.

This thesis consists of seven chapters. The first chapter deals with an introduction to international commitments to the principle of equality. It also attempts to highlight the relationship between religion and personal law. It also deals with law reforms and Hindu women’s rights.

All forms of discrimination on grounds of gender are violative of fundamental freedom and human rights. Gender injustice and insensitiveness manifests itself in the form of discrimination and violence against women. The two basic human rights instruments- the United Nations Charter and the Universal Declaration of Human Rights ensure equality. There are conventions specially relating to women, viz.


3. Convention on the consent of marriage, minimum age of marriage and registration of marriage.


In pursuance of their obligations under the conventions, the state parties condemned discrimination against women in all its forms and agreed to pursue a policy of eliminating discrimination by appropriate legislations.

It is, however, in the area of domestic relation where the inequality against women persists. In the early history of every nation the religion was closely associated with the growth of law and Divine sanction, rather than kingly edicts, was more powerful in enforcing such laws. That is how the code of Manu came into being. The laws of Shastras imposed many disabilities on women. Manu enunciates that her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age. The purpose of marriage was to enable a man becoming perfect to perform sacrifices to the god and to procreate sons. Procreation of son was
given more importance, because it was believed that only son could rescue the parents from the hell. Widows were ordained to lead a strict ascetic life.

Smritikars assigned a special category of property which was known as stridhana.

Independent India has heavily relied on legislation to bring a society which is free from discrimination or inequality. Many educated Indians agitated for the relief to women from several legal disabilities. After independence, the Prime Minister Jawaharlal Nehru decided to bring forward the Hindu Code Bill which aimed at removing the legal disabilities of Hindu women, but in the National Parliament, it was strongly opposed. The opposition to the Bill was not confined to members of the Parliament only. The President Rajendra Prasad urged to withdraw the Bill. But in 1955, in the changed atmosphere of the country the Hindu Code Bill was pushed through. This code was split up in parts, viz: The Hindu Marriage Bill, The Hindu Succession Bill, The Hindu Minority and Guardianship Bill, and The Hindu Adoptions and Maintenance Bill. The Hindu Marriage Bill was passed in 1955 and the remaining Bills were passed in 1956.

The second Chapter is an attempt to highlight position of Hindu women in Vedic period and post-Vedic period.
During the Vedic period Hindu women enjoyed a fair amount of freedom and equality. The Vedic period can be regarded as the period of feminine glory. Hindu women's status was equivalent to that of men. They studied in Gurukuls and enjoyed equality in learning the Vedas. Men and women together performed religious duties. Monogamy was the general rule, but among the princes, polygamy was also in practice. Women like Gargi and Maitreyi were considered to be high advanced intellectuals. A widow could even marry again.

In the post Vedic period, the status of women suffered a setback when various restrictions were put on women's rights. Education was neglected and later on girls were totally denied access to education. The marriageable age of girls was lowered. The neglect of education and early marriage produced disastrous consequences regarding the position of Hindu women. Women came to be regarded as being of the same status as the Sudra. With invasions of India by foreign rulers, the position of women was further degraded. For reasons of security, movement outside the house was restricted. Purdah system became fairly well grounded. Being uneducated and devoid of any status, they came to be treated as chattels. Consequently, the practice of Sati became quite common.

The social reformation movement during the British rule began with a few educated Indians who had western education. Many laws were
enacted which tried to eradicate certain social evils. These included Acts legalising remarriage of widows, Child Marriage Restraint Act, Hindu Women’s Right to Property. Sati was made a crime.

After independence, the legislature took a more positive attitude in the matter of law reform. Hindu Code Bill was passed after dividing into four separate Acts.

The third chapter deals with Hindu women’s rights under matrimonial laws. According to ancient Hindu law, marriage is the last of the ten sacraments and a sacred tie, which can never be broken. It is a well settled doctrine of the Hindu religion that a man must have a son to save him from the suffering of the hell. Marriage is essential also because all the religious ceremonies and rites are to be performed by a Hindu in the companionship of the wife otherwise they will not bear any fruits. A wife is declared to be half of her husband, equally sharing fruits of pure acts. According to Smiritis, there were eight forms of marriage:

(1) Brahma (2) Daiva (3) Arsha (4) Prajapatya (5) Asura
(6) Gandhava (7) Rakshasa and (8) Paishacha.

The first four form of marriage were regarded “regular” or dharmya form of marriage and the remaining four forms were known as “irregular” or adharmya forms of marriage.
After passing the Hindu Marriage Act 1955, the Hindu marriage has gone a change. It is more a result of mutual consent than sacramental. The Act does not use the expression “sacramental marriage” but speaks of a Hindu marriage solemnised in accordance with the customary rites and ceremonies of either party. Section 5 of the Act introduces monogamy. Section 7 of the Act says that a Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto. The performance of necessary ceremonies is a vital question in bigamy case. But it is essential that such ceremonies and rites must be proved to be ancient, continuous and definite and that it should be recognized in the community either of the bride or bridegroom. If the marriage is not a valid marriage, it is no marriage in the eye of law. Where a spouse contracts a second marriage while the first marriage is still subsisting, the spouse would be guilty of bigamy under Section 494 of Indian Penal Code if it is proved that the second marriage was a valid one. The validity of the marriage under Section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of Section 494 of Indian Penal Code because the second marriage will become void only because of the provision of Section 17 of the Hindu Marriage Act. If the bigamous marriage is performed secretly without strictly observing all the ceremonies makes it more difficult to prove even though the husband commits bigamy.
For the first time, Hindu Marriage Act, 1955 has made changes by providing specific matrimonial remedies to Hindu Women, viz. (i) Restitution of conjugal rights (ii) Judicial Separation and (iii) Divorce.

The texts of Hindu Law recognised the Principle “let mutual fidelity continue until death”. The old Hindu law stressed on the wife’s implicit obedience to her husband. In the so-called strict Hindu law, divorce was not allowed except in certain communities in the lower social strata, where it was permitted by custom. Divorce was the most radical social reform. The concept of sacramental Hindu marriage was viewed as a fetter binding the feet of those Hindu women who face tremendous odds when their marriage was not workable. The provision for divorce under Hindu Marriage Act truly came as a great relief to Hindu women even though it is still reserved as the last resort.

The duty of maintaining the wife and other dependent members of the family, who are in want, is strictly enjoined by the Hindu law. However, unchastity on the part of Hindu women disentitled them to maintenance.

Section 24 of the Hindu Marriage Act makes a provision for grant of maintenance *pendente lite* and expenses of proceedings to either spouse and Section 25 contains provisions regarding payments of permanent
almimony and maintenance. The object of Section 24 is to ensure that party to a proceeding does not suffer during the pendency of the proceeding by reason of his or her poverty. The provisions contained in Sections 24 and 25 of the Act are a progressive law to the Hindu wife who is in financial hardship and unable to maintain herself especially during the legal proceedings. But such right to maintenance of a Hindu wife comes to an end when the Hindu wife has remarried or she has not remained chaste.

Sections 125-128 of the Code of Criminal Procedure, 1973, provide comprehensive scheme for the maintenance of wife, children and aged parents. Though the subject matter of these provisions is civil in nature, the primary justification for their inclusion in the Criminal Procedure code is that this remedy is more speedy and economic than that available in civil courts. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance.

Section 18 of the Hindu Adoptions and Maintenance, Act 1956 is in regard to entitlement of maintenance in the case of wife. According to this Section it is the right of a wife to be maintained by her husband during her lifetime. This obligation of the husband is a personal one independent of the possession of property, ancestral or self acquired by him. The liability of the husband is not affected by the fact that she is quite rich. Section 18(2) of the Hindu Adoptions and Maintenance Act lays down the grounds
under which a Hindu wife is entitled to live separately from her husband without losing her right of maintenance. (These grounds include, (1) if the husband is guilty of desertion, cruelty, (2) if he is suffering from virulent form of leprosy, (3) if he has another wife living, (4) if he is living with a concubine, (5) if the husband has undergone conversion or (6) there is some other justifiable cause.) But the wife forfeits her right to maintenance, if she becomes unchaste or converts to other religion. The Act under Section 19 makes provision for the maintenance of a widowed daughter-in-law if she has no other means to support her out of her husband or son or daughter's estate. An unmarried daughter is also entitled to maintenance under this Act.

The fourth chapter contains Law of inheritance and succession and Hindu Women's right. From ancient times Hindu society has preferred the birth of a son to a daughter. Dharma Sutras indicate that the son succeeded to the father. The son got the inheritances and daughter was to get no share of it. The Vedic literature prescribed inheritance to a brother less daughter. The daughters with brothers, however, were excluded from the rights to inheritance. The husband and the wife were also treated as joint owners of the household and its property. But it helps the wife only in securing a number of minor rights. It did not secure for her an absolute equality with the husband in the ownership of the property. Gradually, Smritikars
assigned a special category of property to Hindu woman which was termed as *stridhana*. It comprised only some ornaments. After sometime women started getting immovable property as *stridhana* but it was under the control of her husband. Hindu Succession Act 1956 has brought new changes. Section 14 of the Act abolished women’s limited estate and makes her the full owner. Among the Class I heirs many females were included. The Hindu succession (Amendment) Act 2005 again brought revolutionary changes. The Amendment Act attempts to remove the discrimination contained in the Hindu Succession Act 1956 by giving equal rights to Hindu females. By amending Section 6 of the Act the daughter of Mitakshara Coparcener shall by birth become a coparcener in her own right in the same manner as the son. The Amending Act of 2005 omitted Sections 23 and 24 of the Hindu Succession Act 1956. Now Hindu female heir can ask for partition her share in respect of dwelling house of the joint families. It also removes the disqualification of some widows to inherit the property of intestate. It also added new heirs in the schedule as Class I heirs.

The fifth chapter deals with the law of adoption and Hindu women’s rights. Before passing the Hindu Adoptions and Maintenance Act 1956, adoption used to be religious in character. Many rules were imposed. This prevented adoption of a daughter. Son can only be adopted for the
performance of one’s funeral rites and offerings as well as for the continuance of the family. Adoption could be made by man only. But a Hindu widow under certain circumstances could adopt a son to her deceased husband and not to her. The Hindu Adoptions and Maintenance Act, 1956 has brought some changes that relate to the Status of Hindu women. Now under the Act, the Hindu female who is unmarried or her marriage has been dissolved or a widow can adopt to herself. A daughter can also be adopted. Under the Act, the Hindu male has to take consent of his wife at the time of taking a child for adoption or at the time of giving in the child in adoption. But still now a married Hindu woman has power to adopt only if her husband has renounced the world or he has become insane or has ceased to be a Hindu.

The Sixth chapter seeks to describe in brief the impact of the Constitution and Indian Judiciary on Hindu women. With regard to the women, the Constitution contains many negative and positive provisions which go a long way in securing gender justice. Article 14 of the Constitution provides the provisions for equality before the law. Article 15 specifically prohibits discrimination on the ground of sex. Article 15(3) lifts that rigour and permits the state to positively discriminate in favour of women to make special provision. The Directive Principles of State Policy
contained in Part IV of the Constitution incorporate many directives to the state to improve the status of women and for their protection.

For the enforcement of the rights of women, Indian judiciary also plays an important role. The Hindu Marriage Act, 1955 has introduced the concept of monogamy into Hindu marriage and this provision seems to have caused a great deal of resentment among Hindus.

The provision of monogamy was introduced to elevate the status of Hindu women. Since monogamy is the law of Hindus, the Muslim law permits as many as four wives in India. The errant Hindu husbands embrace Islam to avoid the provisions of Hindu law and to escape from penal consequences. The Court held that such second marriage by convert would therefore be in violation of the provision of Hindu Marriage Act and as such void and punishable under Section 495 of Indian Penal Code. The Supreme Court has passed direction to the Central Government to take a fresh look at Article 44 of the Constitution and make uniform Civil Code for the whole country.

The Supreme Court in many cases makes the emphasis to make provision for compulsory registration of marriage. The Court observed that if the record of marriage is kept, the dispute concerning solemnization of marriage for validity of marriage between two persons can be avoided. It
has also a great evidentiary value in the matters of custody of children born from the wedlock of two persons whose marriage is registered.

The Seventh Chapter deals with conclusion. In this Chapter the main findings in the previous chapters have been summarised to show how the rights of Hindu women have been provided and protected by the Hindu personal laws and the need of bringing about required changes to make it effective.