CHAPTER-3

PROMOTION AND PROTECTION OF HUMAN RIGHTS IN INDIA WITH SPECIAL REFERENCE TO THE STATUS OF WOMEN

3.1 EVOLUTION OF HUMAN RIGHTS IN INDIA AND THE STATUS OF WOMEN BEFORE INDEPENDENCE:

3.1.1 Vedic Period¹ (1500-500 BCE):

The concept of human rights in India is as old as 5000 years. Of course the concept was not named as ‘human rights’. The modern philosophers believe that the concept of human rights is the creation of western world. But the said concept had its roots in India during ancient time. Just like Romans and Greeks, the ancient Indian philosophers, who believed in humanism and rationalism, did ceaseless endeavor for maintaining peace and harmony in the society. Their theory was based on balancing four moral values such as: ‘Dharma’ (duty), Artha (wealth and worldly prosperity), Kama (desire), Moksha (liberation), which was followed since the Vedic age. It means that one should follow the law of God and fulfill all his obligations to achieve salvation. If one wants to understand the conduct of Hindus, their customs and traditions, their religious and philosophical beliefs, and status of women in ancient India, then the knowledge of ‘Veda’² becomes essential. The term ‘Veda’ is derived from Sanskrit word ‘Vid’ which means understanding, acquiring or procuring knowledge. Vedas is a vast collection of realization of spiritual scriptures experienced by religious saints and is believed to be created by God himself, thousands of years ago. It is believed that Vedas have come out from the breath of Lord Brahma, who imparted the divine knowledge to male saints known as ‘Rishis’ and to women scholars known as ‘Rishikas’. Men and women irrespective of the caste they belonged to were authorized to enchant Vedas. The Vedic period did not lag behind in giving

¹ Vedic period: the period in Indian history (1500-500BCE) during which the Vedas, the oldest scriptures of Hinduism were composed
² Vedas: Any of the four collections forming the earliest body of Indian scripture, consisting of the Rig Veda, Sama Veda, Yajur Veda, and Atharva Veda, which codified the ideas and practices of Vedic religion and laid down the basis of classical Hinduism.
education to their children. The two morals prevailed in the foundation of Vedic age i.e. non-violence and social justice. The punishment was given to the offenders for violation of dharma (religion). No individual was considered superior or inferior to other and the progress of the society was the collective responsibility of all. The virtues of ‘equality’ and ‘brotherhood’ were ingrained in the culture of Vedic civilization. These virtues are represented by a Sanskrit phrase,

‘वसुधैव कुटुम्बकम्’

(Vasudhaiva Kutumbakam)

The phrase ‘Vasudhaiva Kutumbakam’ means the world is one family. Thus it seems that right to life, liberty, equality and dignity prevailed during Vedic age. ‘Rigveda’, an ancient Indian text or a scripture containing large body of knowledge, majorly contained hymns of various deities. It also gave idea of norms and belief system prevailing in Indian society in ancient time. The Mantras of Rigveda also gave idea about human rights, which are quite familiar with modern human rights. The principle imbibed in Rigveda for considering peoples’ welfare to be the supreme duty is:

“बहुजन हिताय-बहुजन सुखाय”

(Bahujan Hitaay, bahujan sukhaay)

The phrase, “Bahujan hitaay, bahujan sukhaay” means the public welfare lies in the happiness of masses. The mantras in Rigveda were authored by 400 scholars, out of which 30 were women scholars. In it, we find the reference of many powerful women such as Lopamudra, Romsha, Vishvawara, Apala, Indrani, etc who could stand in the competition of rishis. In ancient India, the society was divided in class system known as ‘varna’, based on the vocation of people i.e. the Brahmins (the spiritual class), the Kshatriyas (the ruling class), the Vaishyas (the merchant class) and the Shudras (the servants). Vedic age seems to be very liberal in providing equal status to its people. Many women scholars such as Vishvawara, Apala, Shikhandi,
Raatri, etc were even ‘mantra drashtas’\(^4\). Thus it seems that there prevailed equality between male scholars and female scholars in attaining the divine knowledge of Vedas. In support of the above matter, the researcher strikes to analyze the vedic period, which is full of examples of heroic women such as Apala, Indrani, Urvashi, Ghosha, Sarma Devshuni, Mudgalani, Vishpala, Lopamudra, to name a few. Some out of them were warriors, some were thinkers and some wanted dignified married life. The detailed study of their lives makes us realize their will power, courage and most importantly their determination to fight for their rights.

Apala\(^5\), is a rishika who fought for her conjugal rights. Hindu religion has numerous examples of male rishis and their penance. Apala proves the point that women were equally capable of penance and pleasing the god. Sarma Devsuni\(^6\), was a well known professional spy, extremely loyal, selfless, successful messenger and a watchdog for the society. Sarma had been so intelligent and so logical in her presentation that her arguments with Panis\(^7\) are famous as ‘Sarma-manvi Samvaad’.

‘Mudgalani’\(^8\), was a bold, fearless and confident warrior. Her military skills and diplomacy in war proves the fact that given an opportunity, a woman could be at par with man in any field. Along with Mudgalani, Vishpala\(^9\) was also a legendary warrior of Vedic period. Indrani\(^10\), Urvashi\(^11\) and Lopamudra\(^12\) lived their respective married life on their own terms. Indrani, the epitome of Indian celestial beauty has also a significant place among eight forms of Shakti.\(^13\) It is said that Lord Indra\(^14\) is the only

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\(^4\) Mantra Drashtas: The rishis (male saints) or rishikas (women scholars) who were seers of mantras.

\(^5\) Apala: A woman saint mentioned in eighth mandala (book) of Rigveda. She is daughter of sage Atri, whose hymns occur in Rigveda.

\(^6\) Sarma Devsuni: A Rig-Vedic legend whose mention is found in first, third, fourth and fifth mandalas (books) of Rigveda and the one who helps Lord Indra to recover his stolen cows.

\(^7\) Panis: A non- Arya tribe of tradesmen as described in Rigveda, who by nature were extremely miserly and were often described as envious demons.

\(^8\) Mudgalani: The wife of king Mudgal, whose mention is found in tenth mandala (book) of Rigveda.

\(^9\) Vishpala: The queen of king Khel, who lost her leg in battle and was substituted with an iron leg.

\(^10\) Indrani: Also known as Poulomi, was the daughter of King Puloman and wife of Lord Indra.

\(^11\) Urvashi: A Rig-Vedic legend whose mention is found in tenth mandala of Rig Veda. She is described as an aquatic nymph and a dancer in Lord Indra’s court, who was not permitted to enjoy earthly pleasures. She had a conditional marriage with the human King Pururava.

\(^12\) Lopamudra: The daughter of king Vidarba, (also known as Varaprada) was a female philosopher and was created by the divine powers of sage Agastha. She was a significant female figure of Vedic period who cohabited with her husband Sage Agastha only after fulfillment of her conditions.

\(^13\) Shakti: is the concept or personification of divine feminine creative power sometimes referred to as ‘The Great divine mother’ in Hinduism.

\(^14\) Lord Indra: The leader of lords in heaven in Hinduism. He is the God of lightening, thunders, storm, rains and river flows and the most referred deity in Rig Veda.
god to be known after his wife’s name. Urvashi, a celestial nymph, and Lopamudra had conditional marriage. Maitreyi\(^{15}\) and Gargi\(^{16}\), well read, scholarly, intellectual women, who not only helped the particular age they lived in but also the human race eventually. These two women established the fact that women always were able to contribute in each and every important sector of society, be it war, religion, marriage, profession or philosophy.

The Vedic period did not lag behind in giving education to girl child, who were even ready to observe ‘Brahmacharya’.\(^{17}\) If we go through the social life of people in Vedic period, we come across many facts such as: The girls were considered fit for marriage after the age of fifteen. The parents used to give liberty to their daughter to select the groom through Swayamvar.\(^{18}\) There are references of daughters getting married against the wishes of their fathers E.g. ’Kamadyu’\(^{19}\). In case of arranged marriages, parents used to put stress on education of groom. Marriage was considered as an important sacrament, the performance of which was also considered necessary for religious purposes, e.g. the sacrifices performed by husband were considered useless if they are not accompanied by wife. But child bearing for the women after marriage was a prerogative. In the same way, if a man died without leaving male child behind, that too was considered spiritual calamity. Certain hymns of Rigveda also describes woman as the foundation of the house and her equality with her husband is desirable for religious purposes. In those days, the royal class even thought about the property rights of women. There are references of kings giving away valuable gifts to their princesses in marriage, which could be possessed, alienated or donated at the will of princesses. Moreover the things of basic necessities, which the princesses used at her father’s place, were also given in marriage as gifts,

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15 Maitreyi: A woman seer, philosopher and one of the two wives of sage Yajnavalkya. She is also called Brahmavadini (a female expounder of Veda). She asked for the wealth of spiritual knowledge from her husband, who had decided to divide his assets between two wives before renouncing the world. Thus she became the seeker of ultimate knowledge.
16 Gargi: The vedic prophetess, ancient Indian philosopher and the daughter of sage Vachaknu. She was highly knowledgeable in Vedas and had intellectual debates with male philosophers.
17 Brahmacharya: is a virtue of celibacy when unmarried and fidelity when married. It represents a virtuous lifestyle that includes simple living, meditation and other behaviors.
18 Swayamvar: A practice in ancient India of choosing husband from the list of suitors by a girl of marriageable age.
19 Kamadyu: Wife of king Vimada and a Rig- Vedic legend as mentioned in tenth mandala (book), hymn 65.
which were considered as stridhan.\textsuperscript{20} Even the unmarried girls and widows had property in their name.

The society in those days even thought about the conjugal rights of widow, which were satisfied by brother in law, and were even sanctioned by the society. The society might be giving more importance to the son by levirate as compared to the son by adoption. Monogamy was generally practiced but polygamy was accepted as an exception. The society had more examples of polygyny rather than polyandry. The examples of Bruhaspathi\textsuperscript{21} and Sage Chyavana\textsuperscript{22} support the point. To summarize the researcher would present that the women in Vedic period had free and independent existence and they were empowered culturally, socially and religiously, in spite of certain drawbacks of that period.

### 3.1.2 The Epic of Mahabharata (400 BCE-400CE):

Mahabharata is one of the two Sanskrit epics of ancient India, which is considered by Hindus as ‘dharma’ (religion) and history. The epic is an encyclopedia reflecting the application of philosophy of choosing between right and wrong. It depicts the complexities of human problems and values like loyalty, truth, non-violence, attachment towards personal vows, etc. It reflects culture, norms and belief system prevailed in the society during that time. Kurukshetra\textsuperscript{23}, the battleground of Kauravas\textsuperscript{24} and Pandavas\textsuperscript{25} as mentioned in the epic of Mahabharat, also exhibited the values to what we call as human rights. The treaties similar to human rights treaties, manifested during war were: stopping of warring activities after sunset, not fighting with an unarmed warrior, protecting dignity of women, etc. The human rights were also manifested in Bhagvad Geeta,\textsuperscript{26} which is believed to be the doctrine of universal truth such as: Truth triumphs over evil, the world is perishable and the soul is

\begin{itemize}
\item \textsuperscript{20} Stridhan: As per the Hindu Law, whatever a woman receives during her life time. It includes all movable and immovable property received by woman prior to marriage, at the time of marriage, during childbirth and during her widowhood.
\item \textsuperscript{21} Bruhaspathi: is a Vedic era sage, who counsels the gods. He is admired for his knowledge and character. He is considered as teacher of all Gods. He had three wives: Tara, Subha and Mamta.
\item \textsuperscript{22} Chyavana: sage in Hindu mythology and the author of many hymns of Rigveda.
\item \textsuperscript{23} Kurukshetra: the war between two groups of cousins: Kauravas and Pandavas for the throne of Hastinapur in an Indian kingdom called ‘Kuru’.
\item \textsuperscript{24} Kauravas: the descendants of king Kuru, (here) the children of King Dhritarashtra through queen Gandhari.
\item \textsuperscript{25} Pandavas: the five acknowledged sons of king Pandu by his two wives Kunti and Madri.
\item \textsuperscript{26} Bhagvad Geeta: the part of epic Mahabharata containing dialogues between Lord Krishna and Pandava prince Arjunā, guiding him to fight the righteous war.
\end{itemize}
immortal, progress and development are the rules of universe, to name a few. It was the era when gender equality prevailed. In fact the birth of a girl child was a lavish celebration, as they were considered to be the form of Goddess Laxmi. They were considered as incomparable source of happiness for the family and were brought up with extra care and attention. Even the relationship between the brother and sister was affectionate. However it was a period where moral values were given a lot of importance. So if unwed girls gave birth that was considered shameful. Girls were given lot of freedom and were encouraged to gain education. Daughters even used to help their family in earning livelihood during the time of financial crisis.

Marriage was considered following of dharma and a means of procreation of children, more than sexual pleasure. Girls had complete freedom to select their partners as per their wish. Kanyadaan was considered to be the highest form of pious duty for parents. In case if father and brother were not alive, even mothers could perform kanyadaan. Swayamvar was arranged by fathers for their daughters to select eligible grooms. It was a period when marriage was considered a lifelong commitment. Divorce was not prevalent during that time. Girls carefully chose their partners considering their family background, culture and financial stability. Age was not considered a barrier for eligible proposals. Dowry in the form of gifts, cash or kind, were given by bride’s parents. But the practice was not mandatory. There was a trend of conditional marriage whereby on non-fulfillment of conditions the couples used to get separate. In that time, women were concerned about dignity of their character. Residing in joint family, she often became victim of lust and hunger of her near relatives. However it was an era where women had liberty to have physical relation with other males among family. There are references of brothers sharing wives between them e.g. Draupadi. It seems that patriarchy prevailed in society at the time of Mahabharata, yet women were able to make remarkable position for themselves within the limits set for them. Thus if we see from women’s point of view, they had become power structures, both in private and public spheres and they stood at par with men and sometimes even more empowered than men.

27 Goddess Laxmi: is the Hindu goddess of wealth, fortune and prosperity. She is wife of Lord Vishnu, a major God in Hinduism.
28 Kanyadaan: is the ritual of giving away of daughter by parents in marriage.
29 Draupadi is referred as an emerged daughter of King Drupad of Panchala and the wife of Pandavas in the epic of Mahabharata.
3.1.3 The Epic of Ramayana (400 BCE-400CE):

*Ramayana*, an epic poem, is one of the two great works of Indian literature, along with Mahabharata. The human rights were also manifested during this era. The epic also gives the glimpses of duties imposed on king such as reasonability of taxes imposed on common men, soldiers to be paid duly, etc, so as to save the subjects from selfish motives of king. The sacred text, also known as magnum opus of Hindu mythology, molds the thinking pattern by pouring values like humanity, loyalty, unconditional love, adhering to religion, respect for elders, etc. Even during Ramayana, patriarchal society prevailed where male child was given more importance than female child. Kings used to do penance to beget male child, who would be an heir to his throne. However there are good grounds to assume that the daughters were also brought up with utmost care and affection. The kings used to invite scholars to impart basic education to their daughters along with making them proficient in extracurricular activities like music, dance, drama, painting, archery, etc. Apart from that, some of them were given professional education, military training (e.g. *Kaikeyi*)\(^30\) and the knowledge of *Ayurveda*.\(^31\) The system of co-education also prevailed during that time and in support of which kings were ready to send their princesses to distant places. Many kings even used to offer their princesses in marriage to the scholars and sages from whom they had taken formal education. The stress was laid on education of women but after marriage practical education related to family and social life was more emphasized upon.

The society at that time was more concerned about the purity of women and so their actions were controlled by fathers before marriage and by husbands after marriage, as any unethical action of woman would affect the reputation of the family of her parents and in-laws. The most important ritual followed during marriage was a vow (*paani grahan*) taken by parents while giving away their daughter to the groom, which was an assurance by parents to the groom that their daughter would follow him like a shadow throughout her life. The society expected total dedication of wife towards her husband and worship him as God, even though he was engaged in any sinful activities. However, taking a vow of having a single wife throughout the life by

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\(^{30}\) *Kaikeyi*: one of King Dashrath’s three wives and queen of Ayodhya. She was depicted as an intelligent woman in Indian epic of Ramayana.

\(^{31}\) *Ayurveda*: is a system of traditional Hindu system of medicine using herbs and minerals, based on the idea of balance in bodily systems.
Lord Rama\textsuperscript{32}, though polygyny observed by his father, shows his respect and loyalty in marital relationship. The chastity of women was emphasized and so Sita\textsuperscript{33}, the epitome of virtue, had to pass from fire to prove her purity, once abducted by Ravana\textsuperscript{34}. Moreover, the deteriorating position of women got fuelled when Tulsi\textsuperscript{35}das, the composer of original Ramayana in Sanskrit, also believed that the drum, the animal, the Shudra\textsuperscript{36} and the woman should be treated at par and are destined to be beaten. The evils like rape, adultery, abduction, etc prevailed during that time but at the same time there was no mention about child marriage, dowry, sati, or purdah system.

3.1.4 Smriti Period (1250 BCE-1000CE):

Smritis were the codes of conduct enacted from time to time by various scholars for regulating social, economic and political affairs of people living in society. During this era, more than 200 scholars made endeavor to organize the displaced human society by framing laws for its members. Out of them, only few Smritis are traceable today. Some of the prominent Smriti writers were: sage Manu (whose Smriti focused on moral and legal codes required for strengthening the fabric of society), sage Yajnavalkya\textsuperscript{37} (whose Smriti focused on judiciary practiced in medieval India), sage Narad\textsuperscript{38} (whose Smriti focused on procedural laws required for just ruling of the country), sage Parashar\textsuperscript{39} (whose Smriti focused on the methods of purification of soul in Kaliyug\textsuperscript{40}). Amongst all these Smritis, Manusmriti is considered to be the most influential and so whenever one talks about women and their position in Smritis, one usually talks about Manusmriti. Manu dealt with the

\textsuperscript{32} Rama: the eldest son of King Dashratha and queen Kaushalya and the central male figure of Hindu epic Ramayana.
\textsuperscript{33} Sita: central female character of Hindu epic Ramayana, who is an adopted daughter of King Janak and wife of King Rama, the central male character of the epic Ramayana.
\textsuperscript{34} Ravana: is a primary antagonist in the Hindu epic Ramayana, the demon king of Lanka.
\textsuperscript{35} Tulsi\textsuperscript{35}das: Hindu poet, reformer and philosopher, in the lineage of Jagadguru Ramanandacharya, renowned for his devotion to the Lord Shri Rama.
\textsuperscript{36} Shudra- the fourth varna, based on the caste system in ancient India, and more specifically the Hindu varna system, consisting of people serving the people of other three varnas.
\textsuperscript{37} Yajnavalkya: was a sage and a philosopher of Vedic India. He was renowned for his expertise in Vedic rituals and his unrivaled talent in theological debate.
\textsuperscript{38} Narad: was a Vedic sage famous in Hindu traditions as a travelling musician and storyteller, who carries news and enlightening wisdom.
\textsuperscript{39} Parashar: was the author of many Indian texts. He was grandson of sage Vasishtha and father of sage Vyasa.
\textsuperscript{40} Kaliyug: is last of the four stages the world goes through as part of the cycle of yugas as described in Sanskrit literature.
problems of society which were damaging its traditional fabric and tried to codify customary laws, and so he was declared as ‘the parent of Hindu jurisprudence’ by the society. Many sages made revisions in the original scripture to suit the demands of the society and the final version was not even one-tenth as compared to the original. Originally the dramas were performed based on such religious texts to communicate the ideas of the author to the society, which might have maligned it. For ages, Hindu society has looked upon Manusmriti for appropriate guidance. It would not be wrong to say that in case of crisis, Hindu society turned to Manu with an expectation of direct, fair and an unbiased opinion. Although Manu has enjoyed blind faith of Hindu society, for ages, the reality has compelled the modern age to question the authenticity of the content of Manusmriti. The following observations make us wonder that can Manu, a man of excellence be so biased against women:

Dharmashastra\textsuperscript{41} does not talk about woman as an individual identity, but emphasizes her role as a mother, wife, sister and so on and expects to forget her own self and gain satisfaction in serving others. According to Manu the company of women was not advisable for men, even in adverse circumstances. He firmly believed in casteism and so had prescribed the norms that in which caste a man should/shouldn’t marry. He believed that the actions of women should be controlled by men in all phases of their lives. The society, at that time put much stress on chastity of women and so he even cursed the women who did not follow his code of conduct. Moreover, it is believed that due to increasing influence of Vedas and Shastras\textsuperscript{42} in the society, the women were declared unqualified for enchanting Vedas and thus from that time it is believed that dark ages descended for women. The illiteracy of women could breed only ill-educated progeny. The disgraceful portrayal of women in some verses of Manusmriti was:

1. Expecting certain behavior of women in society sage Manu mentioned that, “Women to be socially accepted should not consume alcohol, be in the company of wicked people, separated from husband and dwelling in other man’s house and resting at untimely hours.”…(9-13)

\textsuperscript{41} Dharmashastra: the ancient law books of Hindus which prescribe moral laws and principles for religious duty and righteous conduct for followers of faith.

\textsuperscript{42} Shastras: is a Sanskrit word that means ‘precept, rules, manual, compendium, book or treatise’ in a general sense. The word is generally used as a suffix in the Indian literature context, for technical or specialized knowledge in a defined area of practice.
2. Expecting loyalty from wife towards her husband, he mentioned that, “If wife does not follow the code of conduct set by husband for her or violates her duties towards him, then as a part of punishment she would enter the womb of a jackal in her next birth.”...(9-30)

3. Expecting supreme qualities from a proposed bride he mentioned that, “Wise man should not marry a woman who is often sick, talkative, has red eyes, and has excessive hair or no hair.”...(3-8)

4. Alleging women as sexually aroused, he advised males that, “It is the nature of women to seduce men and so wise men should not remain unguarded in the company of women.”...(2-213)

However the following positive remarks made by him strengthen the position of female race in the society. According to him, women are the foundation of a prosperous society and mother is the incarnation of Goddess. He appreciated the capacity of women by writing that one good mother is worth thousand fathers or hundred school masters. He emphasized on the freedom of daughters to select the spouses of their choice as he considered marriage to be a lifelong commitment and so one should be loyal to his/her partner. He even thought about the property rights of woman to make them financially independent and so according to him the daughter must get equal share in property of father along with brothers and the property of mother should pass to her only. The British author Kerry Brown has mentioned her views on women as:

“In Hinduism, a woman is looked after not because she is inferior or incapable, but on the contrary, because she is treasured...Just as crown jewels should not be left unguarded, neither should a woman be left unprotected...”

Certain verses of Manusmriti making dignified portrayal of women were:

1. Considering women as equally strong companion, he mentioned that, “Husband should give freedom to wife for managing finance, preparing food, maintaining hygiene in the house, religious affairs and overall management of house.”...(9-11)

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2. Expecting loyalty from husband towards his wife, he mentioned that, “A knowledgeable and a good character man would never co-habit with another’s wife.”…(9-41)

3. Considering women’s property rights he mentioned that, “The brother should give one-fourth share from his property to unmarried sister, otherwise will be punished.”…(9-118)

The researcher here feels that, Manusmriti is not consistent but it is shaped as per the needs of the society. Thus while writing it; Manu might be influenced by the condition of people prevailing at that time. He might have written both positive and negative sides of the position of women in the society, but readers have their own perception of reading. Moreover the original writings were in Sanskrit, so there is a possibility of readers making faulty interpretation. After reading Manusmriti, people criticize Manu’s ideology for clutching women in the chains of rituals and make him responsible for descending graph of women in the society, but nobody appreciates his ideology for shouldering certain responsibilities on males. One such example is: In September 1987; Ms. Roop Kanwar of Rajasthan burnt herself alive on the funeral pyre of husband. The villagers and writers supporting the horrifying act, called it as sati pratha, sanctioned by ancient religious texts. But the scholars proved that Manusmriti is a rich socio-philosophical text and its hymns can never sanction such terrible act. In fact they encouraged widows to accept their husbands’ death and lead the life with dignity. Manu might be of the opinion that women folk needs more protection and must not be given unprotected independent life, as against the interpretation that women should live within four walls.

3.1.5 Jainism and Buddhism:

Jainism 45 is majorly divided into two segments: Digambaras and Swetambaras which have their own belief about religious order of nuns. The religion of Jainism has a rich history moving around the lives of twenty four Tirthankars i.e. teachers or Gods who found the way out of worldly cycle of births and deaths. Jains not only have been worshipping twenty four tirthankars, but also worship their

44 Parihar R, “Sati: Roop Kanwar was Cheered as She Burnt on her Husband’s Pyre, No she’s a Faint Memory”. India Today. November 29, 1999. http://indiatoday.intoday.in › Magazine › STATES › States: Uttar Pradesh
45 Jainism: an ancient Indian religion based on the principles of non-violence, non-absolutism and non-possessiveness, is believed to have been originated in 7th-5th Century BCE in Ganges basin of eastern India
parents, especially their mothers, considering them the nurturers of divine souls. Many Jain temples are also found to be dedicated to goddesses even today (for e.g. Goddess Padmavati).⁴⁶ Considering women to be the incarnation of goddesses, Jains from ancient time protect the women of their family from natural calamities, be it a wife, daughter or sister. Considering education as a baseline skill and an important tool for acquiring knowledge, Jains in ancient time used to educate even their daughters. The first tirthankar, Rishabhdev gave supreme knowledge to his daughters: Brahmi and Sundari. Rishabhdev taught warring skills to his sons, whereas imparted education to his daughters. He is believed to have taught eighteen different scripts (syllabic alphabets) to his daughter Brahmi and in her respect the ancient scholars call the ancient script as ‘Brahmalipi’. He imparted the knowledge of numbers to another daughter Sundari. Women did not lag behind in exhibiting their knowledge when tested and even mesmerized people by exhibiting their skills. The incidence of Haribhadra⁴⁷ supports this point. Haribhadra, the Brahmin scholar had ego of having undefeatable knowledge. He declared publically to become disciple of one who made incomprehensible statement. Yakini Mahattara⁴⁸, a Jain nun, broke his ego by exhibiting her versatile knowledge and made him a Jain follower.⁴⁹ Lord Mahavir, the last tirthankar, also had women disciples (eg. Ajja Chandana).⁵⁰ Apart from these women, there were many Jain nuns who had notably contributed in Jain literature and helped in spreading Jain religion. The parents used to nurture their daughters with different forms of art like dancing, singing, music, etc. In spite of educating the daughters during that time, the society expected the virtues of chastity and faithfulness towards husband and his family. There were many women, who inspite of being an epitome of beauty, were known for their chastity. Kannaki⁵¹ and Mrigavati⁵² support this point. Women of that era were also known for their decisiveness and were ready to sacrifice all worldly pleasures without thinking for a

⁴⁶ Goddess Padmavati: Female attendant deity of 23rd Tirthankar Parshvanatha and an important goddess among both Digambaras and Swetambaras.
⁴⁷ Haribhadra: (459–529 CE) also known as Haribhadra Suri, was a Jain mendicant and author.
⁴⁸ Yakini Mahattara: a Jain nun named Yakini was bestowed with title ‘Mahattara due to her superior knowledge.
⁵⁰ Ajja Chandana: the daughter of king Dadhivahan and queen Dharini of the kingdom of Anga and the first female disciple of Lord Mahavir.
⁵¹ Kannaki: an ancient female deity of Jainism, worshipped as a goddess of chastity even today by South Indians.
⁵² Mrigavati: the wife of king Shatanika, in the city of Kaushambi. She was also well known for her political foresight.
moment. Rajmati\textsuperscript{53} renounced the world and accepted the ascetic order following the footsteps of husband. During her ascetic life, her brother in law tried to seduce her but she boldly resisted to his demands, showing loyalty towards her husband. Thus females were known for their chastity, as against their male counterparts indulged in promiscuous relations.

However the setback for women was also seen in certain ideology followed by Jains, who considered women to be bad by nature. The society gave more importance to mother of sons, as compared to mother of a daughter. Thus the shades of patriarchal society were seen at that time. Nudity, even today is stressed by Digambaras, (a sect in Jainism) who believed that without which salvation is not possible. However they also accept the difficulty of women being nude in public and therefore they believe that women are incompetent to gain salvation. There is a general belief among all Jains that nuns are inferior to monks and so are prohibited to study some of their religious texts. A monk in Jains with the same years of experience as nun can be a preacher to nun.

\textit{Buddhism,}\textsuperscript{54} is an ancient religion in India broadly based on the teachings of Lord Buddha. Buddhism is not a particular system of belief, faith or worship, but it lays down the philosophy of ‘way of life’. The teachings of Lord Buddha regarding sanctity of life are applicable to all mankind without discrimination of caste, sex or social status of individuals. The said religion has suggested eight fold paths which are methods of developing wisdom for leading to liberation. They are: right view (for actions and beliefs which will accompany in rebirth), right resolve (aiming for peaceful renunciation), right speech (free of wrong and malicious statements), right conduct (keeping away oneself from dishonest and immoral actions), right livelihood (becoming mendicant), right effort (of cultivating positive attitudes), right mindfulness (of controlling the thoughts) and right meditation (to concentrate effectively). Many of these phrases and concepts are similar with human rights imbibed in international documents. The ideology of Buddha was very simple to understand. He considered penance as supreme way of liberation i.e. freeing oneself from the sufferings of life. He considered men and women equally competent for

\textsuperscript{53} Rajmati: also known as Rajul, was the wife of 22\textsuperscript{nd} tirthankar, Lord Neminath. She was princess of famous city of Junagadh near Girnar mountain.

\textsuperscript{54} Buddhism: an ancient religion which was believed to be originated in India between 6\textsuperscript{th}-4\textsuperscript{th} century BCE. It is broadly based on the teachings of Lord Buddha (also known as Siddharth Gautama), who was born in Lumbini, as suggested by early texts.
penance. Thus Lord Buddha did not encourage gender discrimination. The Buddhist literature has no reference about the marriageable age of girls but there are certain references of early marriages and marriage with cousins (E.g. Ananda marrying Uppalavanna). The society during the time of Buddha had certain pre-conceived taboos for women. Equality of birth and not wealth was considered as a prime factor for arranged marriages, which were commonly found in those days. Purdah system was prevalent in those days to protect the women from abduction, elopement and non-sanctioned unions. Married women were warned to behave in a particular manner, were expected to be dutiful and devoted to in-laws and had to think about the comforts of their in-laws and husbands, sacrificing their personal comforts. The position of widow in the society was quite pitiable. Widow remarriage was not encouraged. However, parents encouraged their daughters to remarry in case of marital breakdown and would also try to find a suitable partner for them. (E.g. Isidasi\textsuperscript{55} married for three times due to repeated misfortune of marriage breakup). The evil of dowry was not much prevalent except certain references. Polygamy was not a common practice, but if a man wanted, he could go for polygamy. Hardly any women were found practicing polyandry. It seems that Buddha respected women because he said that,

“\textit{A daughter may be better than a son, if she is intelligent, virtuous, devoted to her husband and parents in laws. She may even rule a kingdom. The issue of such a good daughter may become a hero and ruler of some country}”.\textsuperscript{56}

Moreover, Buddha wished that women should be self-reliant so as to handle financial affairs of the family. But at the same time he was of the opinion that so called ‘tender sex’, will not be able to live in homeless state and will not be able to endure the hardships of religious life and so they should not be allowed to become nuns. But women succeeded in proving their potentials and so he was convinced to take them in religious order as nuns, but on certain conditions that, a nun however old she is, has to respect and obey a young monk, has to follow instructions given by him, cannot have a seat in presence of monk, cannot preach any monk or speak ill words to him, cannot enter his dwelling place without his permission, etc. Buddha feared and

\textsuperscript{55} Isidasi: a daughter of wealthy merchant in the city of Ujjain.
\textsuperscript{56} Churn B., “\textit{Women in Buddhist Literature}”. Varanasi: Indological Book House, 1927. P86
predicted that if women were allowed to become nuns then his religion would last for 500 years instead of 1000 years. Thus Buddhist literature depicts both the dark and the bright side of women. But it seems that Buddha was not anti-woman but he did not want women to go out of their household lives.

3.1.6 Rajput Era (650 – 1200 CE):

Rajputs (literally mean sons of a royal blood) are believed to be the descendants of Kshyatriya (the ruling class) of Vedic India. This clan became politically strong and got notability during 650-1200 CE and so historians call it as Rajput era. This clan in history was famous for its heroic valour, physical strength, self sacrifice and readiness to die for motherland. The Rajput kings considered themselves to be the messengers of God and hence tried to rule justly, considering the human rights of all their subjects. They were open minded and had notably contributed in spreading education. They even rewarded many scholars. They protected and respected womenfolk and build many royal palaces in honour of their queens. However, polygamy and purdah were integrated features of this era. Polygamy was practiced by Rajput rulers specifically for political and strategic purposes to such an extent that a ruler can have up to 30 women in his life, including queens and concubines. But in contrast, woman did not have freedom to remarry. As Louis Dumont\(^5\) observes,

“In case of a man his first marriage becomes principal marriage only if it bears him children, preferably sons. But a man has an option, either in case of barrenness of first marriage, or freely in other castes (royal, etc.) of taking other wives, either with full rite (necessary for the wife if she has not been married before) or with subsidiary rite (if she was already been married). Thus for men there are supplementary or subsidiary marriages, with corresponding hierarchy of wives”\(^5\)

It is also seen that during this era that desire to have male heir in the family was to such an extent that queens were ready to declare false pregnancies. Rajput kings preferred to give their daughters to Mughal emperors and their chief

\(^{57}\) Louis Dumont: (1911-1998) was a French anthropologist. He was an associate professor at Oxford University and a specialist on the cultures and societies of India.

subordinates in marriage for political necessity. Exchange marriages prevailed during this time but importance was not much laid on hypergamy (marrying a person of superior caste). However for father of middle class family, the marriage of daughter was an expensive affair and the main cause of debt, as it was important to reach to the status of bridegroom’s family. The concept of polygamy is believed to have lost its importance due to succession disputes in early 19th Century and it continued in certain families because the issue of concubine had lesser status and the daughters of royal families wanted equal status. Thus it is observed that system of marriage during Rajput era was rather a strategy for expansion of their political powers and gaining military strength by binding of two powerful chiefs through marriage alliance instead of a social institution.

Purdah was believed to be introduced due to fear of Rajput women being harassed by Muslim invaders. Some believed that it was introduced so that women follow strict rules of leading a secluded life and limiting their freedom of mixing with other males. Whereas the other experts believe that purdah was a symbol of respect, status, pride and modesty and a means for maintaining social distance among other males of the family. There are references of women being educated and courageous. They used to fight bravely in battle field for preserving the pride of their clan and in spite of being newly married they motivated their husbands to fight. Some women took interest in state politics also and some were economically independent as certain kingdoms were allotted to them for their personal expenses. Thus it seems that in spite of women being educated and talented, their lives were full of sacrifices and they were used mainly as an instrument for achieving political strength by every man in their lives: father, brother and husband.

3.1.7 Mughal Era (1526-1857 CE):

The Mughals, the descendants of Mongol dynasty, moulded the thinking pattern of Indians as far as human rights were concerned. The Mughal empire was run by talented and capable Muslim rulers, who wanted India to be ruled by single powerful ruler. They were ambitious in acquiring wealth, expanding their empire and lead a royal lifestyle. The position of women before Mughals founded their empire in India was disappointing. The rights and freedom which women used to enjoy during Vedic period gradually diminished. The position of women deteriorated due to the
evils like Jauhar\footnote{Jauhar: is the self immolation of women especially by queens and royal females of Hindu kingdoms, when facing defeat at the hands of an enemy.}, Sati system, Purdah system, child marriages, etc. prevalent in the society, which was broadly divided among major religions: Hindus and Muslims. Nobles in Mughal kingdom were very strict about feminine modesty. It would be the matter of humiliation for a man whose woman would walk in the streets without a veil. Women, in pre-Mughal period did low jobs like maid servants and attendants in the kings palaces. On special occasions they were expected to please the kings by performing dances and serving them with intoxicants. They were often used as spies and \textit{vish kanyas}.\footnote{Vish Kanyas: young women reportedly used as assassins, often against powerful enemies, in ancient India.}

The women of royal class enjoyed many privileges. Major portion of the palaces were allotted to royal women for their comfort. For their safety, the palaces were guarded by massive walls and eunuchs were appointed for each queen. Mughal kings used to grant allowances and offer gifts for the personal expenditure of queens. Certain women during this era were even aware about their property rights and so there are references where the entire property of father was transferred to princess after father’s death (e.g. Nurjahan).\footnote{Nurjahan: (1577-1645) born as Mehr-un-Nissa, was the twentieth and the most beloved queen of Mughal emperor Jahangir.} Some Mughal women also took interest in foreign trade and developed relations with royal women of other countries. Mughals had developed a sense of respect for queens by addressing them with honorific titles and bowing down from far distance in their honour. The parents of royal families used to train their daughters with different art forms such as painting, dancing and even warring skills, archery, use of weapons, etc. Nurjahan, the wife of King Jahangir, was powerful and influentially strong woman. She had once impressed King Jahangir by shooting four tigers with a gun. Women even had political rights and in many respects were treated equal with men. Certain women accompanied kings in wars and thus were allowed to sit next to kings in court. Nurjahan had political foresight and admirable skills of administration. Due to king’s sickness, she ruled the kingdom along with male subordinates, in spite of taboo of veiling prevalent in the society. She even got coins minted in her name. On the whole women of royal class led a luxurious and comfortable life and hardly there are references of kings ill treating women. However polygamy was highly practiced and so kings had many queens who were always waiting near windows and on terraces for their love as depicted by
Mughal paintings and architecture. Purdah system was strictly followed and women violating the rule were punished.

The women of lower classes did not enjoy the privileges as enjoyed by royal class. They usually helped their husbands in agriculture or in preparing bows and arrows. The education of girls was not given much importance and moreover their studies discontinued due to system of early marriages prevalent in the society. King Akbar,\(^{62}\) insisted on girls education and so during his reign he set up schools for girls. He and the other Mughal kings encouraged widow remarriages, tried to ban jauhar, sati system, dowry, etc but these evils were not totally suppressed during this era. Thus it seems that Mughal era was totally class based as the royal women had many privileges but they were supposed to enjoy them within four walls of palaces and the position of ordinary women in the society was very disappointing.

3.1.8 British Era (1757 – 1947 CE):

As analyzed earlier, the position of women started deteriorating after Vedic period and it became worst before British entered India. Evils like child marriage, sati system, polygamy, purdah system, female infanticide, etc were deeply percolated in the social system of India before British advent. The caste system and untouchability were rigidly practiced which fuelled the disadvantageous position of women. The privileges of enchanting Vedas, receiving education and participation in rituals were available to men and thus women were denied freedom and equality and were made to live almost like slaves.

British entered in India in early 17\(^{th}\) century and got their foothold in India by 18\(^{th}\) century. They entered for the purpose of trade but their actions resulted in human rights violation on a large scale. India was considered as one of the richest country at that time. But the entry of British led to economic, cultural and social changes in Indian society. They looted the resources and were responsible for widespread corruption. Agriculture was badly affected due to their exploitative policies, which also resulted into famines and poverty. The British started levying heavy taxes on Indian goods, which adversely affected traditional crafts which were mainly occupied women along with their family members. The two important elements which were featured during this era were: violent reaction of the British to civil disobedience and

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\(^{62}\) Akbar: (1542-1605) was the third and one of the greatest rulers of Mughal dynasty in India
non-violent resistance movements of Indians to bring about independence for the
country. The best example set for the brutality and violent action showed by British
during the freedom struggle was *Jallianwala Massacre*[^63], where 10,000 men and
women were gathered for peaceful protest against British rule. British troop, without
giving any warning started firing which killed around 400 innocent people. Nearly
100 women and children drowned in the well while taking shelter during this chaos.
The mass violation of human rights in general and women’s rights in particular during
British era was termed by certain critics as ‘Kaliyug’ or dark period in Indian history.
However British were influenced by industrial revolution which took place in
England in later 18th century, in which they were fascinated by the influential role of
women, which stimulated them to introduce the concept of education for women in
India. Thus the first school for women started in early 19th century. The concepts of
equality, freedom, human rights and women’s education were in existence in India
since ancient times in different eras, but British systematized these concepts and
thereafter India made a remarkable progress in women’s education. These concepts
appealed to certain Indian social reformers like Sir Syed Ahmed Khan, Raja Ram
Mohan Roy, Pandita Ramabai, etc who along with British took legal steps to enhance
the position of women in the society and to bring them back to the Vedic glory.

In the year 1918, Mahatma Gandhi propogated ‘Khadi’[^64] as ideology with a
dream of making India self reliant and self governed. He inspired men and women to
spin and propagate khadi, considering it as a duty and sacrifice towards nation and a
tool to demolish class inequality prevailing in the society. He firmly advocated
equality between men and women and thereafter women started participating actively
in freedom struggle. In spite of exploitation and oppression towards women in those
days, they left their homes and traditional roles allotted to them by the society and
joined the freedom struggle. Women majorly supported Gandhiji’s ideology by
protesting foreign goods and by spinning and wearing khadi clothes. They showed
patriotism by taking part in political agitation, facing torture done by police,
protesting the sale of liquor, etc. They even became injured due to use of guns and
teargas by British to control the violent mobs. Women fearlessly joined ‘Jugantar

[^63]: Jallianwala Massacre: the massacre which took place on 13th April, 1919, in a park in Amritsar city
of Punjab, in which non-violent protestors were fired upon by troops of British Indian Army.
[^64]: Khadi: is a term used for hand spun and hand woven cloth, made out of cotton, which is spun on
a spinning wheel called Charkha.
Dal’, a secret revolutionary society, whose agenda was freedom of the country through armed struggle. The empowered women in those days like Sarojini Naidu, Vijayalakshmi Pandit, Sucheta Kriplani, Hansa Mehta, Leela Roy, etc were the ones who contributed remarkably in freedom struggle. Sarojini Naidu\textsuperscript{65} was the one who took total responsibilities of freedom struggle when Gandhiji was arrested by British for saltsatyagrah.\textsuperscript{66} She worked hard for Hindu and Muslim unity. The legal sanction given for banning the sati practice, permitting widow remarriage, inter caste marriages, etc were certain positive steps taken in favour of women. At the local level, Sardar Vallabhbhai Patel\textsuperscript{67} took steps to remove “sexual disqualification” in the District Municipal Act, which barred women from contesting elections. Sardar was of the opinion that restricting women from the election was equivalent to eliminating the representation of half of urban population.\textsuperscript{68}

There were many social reformers like Gandhiji, Sarojini Naidu, Annie Beasent, Ishwar Chandra Vidhya Sagar, Raja Ram Mohan Roy, etc who tried to empower women and free them from the clutches of evils practiced against them. But Dr. Bhimrao Ambedkar\textsuperscript{69} was a unique reformer who believed in women’s potential, went one step further to demolish hierarchical system from the society which he believed to be responsible for degraded position of women. He along with his wife, used to organize conferences to instill awakening in women. In one such conference he even burnt ‘Manusmriti’, which he believed to be the root cause of discrimination against women. His deep study of various Hindu literatures became an instrument for his knowledge about position of women in Hindu society in pre Manu days. He realized that women enjoyed equal status as men, which got deteriorated in the post Manu period, because of Manusmriti. Thus, in the depressed classes women’s conference held at Nagpur in July 1942, attended by 25,000 women, he aroused their enthusiasm saying that,

\textsuperscript{65} Sarojini Naidu: Also known by the sobriquet ‘The Nightangle of India’, was an Indian independence activist, poet, first woman to become governor of Indian state and one of the fifteen female members of Constituent Assembly of India.

\textsuperscript{66} Salt Satyagrah: also known as Dandi Satyagrah was an act of non-violent civil disobedience in colonial India initiated by Mahatma Gandhi to produce salt from sea water in Dandi village as was practiced by local people before Britishers introduced tax on it.

\textsuperscript{67} Sardar Vallabhbhai Patel: (1875-1950) was an Indian barrister and Statesman, a leader of Indian National Congress and founding father of Republic of India.

\textsuperscript{68} Shastri P., “Iron will Against Use of Name”. \textit{The Times of India, Ahmedabad}. October 31, 2015. Page 2

\textsuperscript{69} Dr. Bhimrao Ambedkar: (1891-1956) was an Indian jurist, economist, politician and social reformer, who inspired Dalit movement and also supported rights of women.
“I am great believer of women’s organization. I know that they can improve the condition of the society if they are convinced. In the eradication of social evils they have rendered great services”.

Being a well wisher of women folk, for their personal growth, he further advised that,

“Women should learn to be clean and keep themselves away from vices. They should educate their children and instill high ambition in them.”

Speaking further on issue of marriage and parental responsibilities, he added that,

“Women should get married only when they are financially able. They should stand by their husband as a friend and equal and refuse to be his slave. Having too many children is a crime. The parental duty lies in giving each child a better start than its parents had. I am sure that if you follow this advice then you will bring honour and glory to yourselves.”

3.2 STATUS OF WOMEN AFTER INDEPENDENCE:

3.2.1 The Constitution of India:

The Indian Constitution, the supreme law of the country, which came into force on 26th January 1950, provides a legal framework of the provisions which are applicable to all citizens of India equally, irrespective of caste, religion or sex. In the ground work of the Indian Constitution lays the borrowed features of previous legislations of India such as: The Government of India Act 1858, Indian Councils Act 1861, India Councils Act 1892, India Councils Act 1909, The Government of India Act 1919, and The Government of India Act 1935. The founding fathers of Indian Constitution, being influenced by other Constitutions of the world has also borrowed certain features like: The ideas of Parliamentary form of government, rule of law, single citizenship, etc from British Constitution; equal protection under law, fundamental rights, independence of judiciary, etc from United States Constitution;

Concurrent list, terminology of Preamble, etc from Australian Constitution; Concepts of liberty, equality and fraternity from French Constitution; a quasi-federal form of government, distribution of powers between Central government and State governments, etc from Canadian Constitution; fundamental duties u/a 51A from Soviet Union Constitution; and some features from Constitutions of South Africa and Japan.

The first attempt to frame a new Constitution for India was made way back in 1895, by Mrs. Annie Besant\textsuperscript{71} and Bal Gangadhar Tilak\textsuperscript{72}, who framed the document called ‘The Constitution of India Bill’. It was also known as Swaraj Bill or Home Rule Bill, which was an image of American Bill of Rights, which was looked upon by Indian activists. The text of the Bill mentioned that, “Every citizen has in his house an inviolable asylum.” These terms suggests that State cannot interfere in the right to privacy once attributed to an individual. Another Bill was prepared by Mahatma Gandhi, Sarojini Naidu and Bipin Chandra Pal\textsuperscript{73} under the leadership of Tej Bahdur Sapru\textsuperscript{74} in the year 1925. The Bill was known as ‘The Commonwealth of India Bill’, was a landmark Bill and the text of it read as, “Every person shall have the fundamental right to liberty of person and security of his dwelling and property”\textsuperscript{75}. It demanded following fundamental rights:

1. Individual liberty
2. Freedom of conscience
3. Free expression of opinion
4. Freedom of assembly
5. Non-discrimination on the ground of sex
6. Free elementary education

\textsuperscript{71} Mrs. Annie Besant: (1847-1933) was a British socialist, theosophist, women’s rights activist, writer, orater and supporter of Irish and Indian self-rule.

\textsuperscript{72} Bal Gangadhar Tilak: (1856-1920) was an Indian nationalist, teacher, social reformer, lawyer and an independence activist, who was conferred the title of ‘Lokmanya’ which means accepted by people.

\textsuperscript{73} Bipin Chandra Pal: (1858-1932) was an Indian nationalist, a member of Indian National Congress and a member of a popular trio associated with revolutionary activities known as Lal, Bal and Pal consisting of Lala Lajpat Rai, Bal Gangadhar Tilak and Bipin Chandra Pal.

\textsuperscript{74} Tej Bahadur Sapru: (1875-1949) was a prominent Indian freedom fighter, lawyer and politician. He helped in drafting Indian Constitution.

\textsuperscript{75} Nayak V., “Indian Constitution was Written up, Enforced without Explicit Recognition of Individual’s Privacy as Fundamental Right”. Counterview.org, August 7, 2015. https://counterview.org/2015/08/07/indian-constitution-was-written-up-enforced-without-explicit-recognition-of-individuals-privacy-as-fundamental-right/
The activists by preparing the Bill had sowed the seeds for Constitution of India. The seeds sowed by them could not germinate at that time but it bore the fruits after three years i.e. in 1928 when a Committee was appointed by Indian National Congress under the leadership of Motilal Nehru to enumerate the Fundamental Rights. The Committee so comprised had put negative duty on the State as, “No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated save in accordance with the law”. It is worth mentioning that “Equality of rights to men and women as citizens” was one of the fundamental rights enumerated in the list by The Motilal Nehru Committee in 1928. Thus non-discrimination on the grounds of caste, creed, race, religion or sex was even witnessed in earlier documents.

It is interesting to note that 15 female members participated in framing of the Indian Constitution which came into force in the year 1950 namely: Sarojini Naidu, Vijayalakshmi Pandit, Hansa Mehta, Sucheta Kriplani, Begam Aziz Rasul, etc. Their contribution in drafting the Constitution is considered notable, which lasted for 2 years, 11 months and 17 days. Dakshayani Velayudhan was the first Dalit graduate woman who protested for dalits in India and took special interest in education of scheduled castes. She was against any type of reservation. The social reformer and educator, Hansa Mehta, opposed the shops selling foreign goods and women reservation. Purnima Banerjee advocated that state run schools should not insist their students to attend religious classes against their wishes. Renuka Ray called reservation for women as insult to women’s intelligence and capabilities. The only Muslim woman representative in constituent assembly was Begam Aziz Rasul, who

76 Motilal Nehru- was an Indian lawyer, an activist of the Indian National Movement and an important leader of the Indian National Congress.
77 Nayak V., “Indian Constitution was Written up, Enforced without Explicit Recognition of Individual’s Privacy as Fundamental Right”, Counterview.org, August 7, 2015. https://counterview.org/2015/08/07/indian-constitution-was-written-up-enforced-without-explicit-recognition-of-individuals-privacy-as-fundamental-right/
78 Dakshayani Velayudhan: (1912-1978) was an Indian parliamentarian and leader of depressed classes. She was first Dalit woman graduate, a member of Cochin Legislative Council, and one of the fifteen female members of Constituent Assembly of India.
79 Purnima Banerjee: (1911-1951) was an Indian freedom fighter. She was member of Uttar Pradesh Legislative Assembly and one of the fifteen female members of Constituent Assembly of India.
80 Renuka Ray: (1904-1997) was a noted freedom fighter, social activist and politician of India. She was a social worker and member of the All India Women’s Conference. She was one of the fifteen female members of Constituent Assembly of India.
81 Begum Aizaz Rasul: (1908-2001) was an Indian politician and only Muslim woman to become the member of Constituent Assembly of India.
also opposed reservation for minority and had knowledge about Constitutions of various countries and so she represented India in common wealth. She opposed separate electorates for minority and favoured single non-transferable vote. Durgabai Deshmukh,\textsuperscript{82} being a law practitioner, advocated independence of judiciary and method of appointing judges in the courts.

During the British rule in India, there was systematic violation of human rights and the framers of the Constitution were aware about the ill-treatment and cruelty suffered by women through ages and so they tried to strengthen their position. Thus certain provisions of positive discrimination were enacted in the Constitution of India to remove disparities, dissimilarities and discrimination against women and to give them equal status with men. Moreover, one of the objects of Constitution of India is Welfare State and so it becomes the duty of the State to cater to the social well being of its people. The four pillars of Constitution as enshrined in Preamble are “JUSTICE”, “LIBERTY”, “EQUALITY”, and “FRATERNITY”. The concept of ‘Equality’ is enshrined in the Constitution, by our founding fathers, not only in its Preamble but also in Fundamental Rights, Fundamental Duties and Directive Principles. It is a guarantee provided by the Constitution of India to the citizens of India that there would prevail justice, liberty and equality in the country while promoting the dignity of its citizens.

Article 14 guarantees equality before law and thus it provides that the State shall not deny to any person equality before law or the equal protection of laws. It means men and women will be treated equally under equal circumstances. Article 15(1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. Article 15 (3) allows the state to make any special provision for women and children. Article 16 guarantees equality of opportunity for all citizens in matter of employment. Here the Parliament shall not be prevented from making any law for any class or classes. Article 21 gives right to life and liberty. Article 23 provides for prohibition of traffic in human beings and forced labour. Article 39(a) provides that the State shall direct its policy towards securing that the citizens, men and women equally, have the right to

\textsuperscript{82} Durgabai Deshmukh: (1909-1981) was an Indian freedom fighter, lawyer, social worker and politician, member of Constituent Assembly of India and member of Planning Commission of India.
adequate means to livelihood. Article 39 (b) provides that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. Article 39(d) provides that there is equal pay for equal work for both men and women. Article 42 provides that the State should make provision for securing just and humane conditions of work and for maternity relief. Article 46 provides that the State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation. Article 51 (A) (e) provides to promote harmony and the spirit of common brotherhood among all the people of India and to renounce the practices derogatory to the dignity of women. Article 243 D (3) provides that not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. Article 243 D (4) provides that not less than one-third of the total number of the offices of the chairpersons in the Panchayats at each level to be reserved for women.

3.2.2 The Constitutionality of Provisions under Indian Penal Code:

The Indian Penal Code, enacted in 1860 is applicable uniformly to all without making discrimination on the basis of sex. The jurists might be aware about the crimes practiced against women through ages. In order to give protection to women against such crimes, certain provisions were enacted. Some of them are as follows:
Table 3.1
Table representing Provisions for the protection of women under
Indian Penal Code

<table>
<thead>
<tr>
<th>SR. NO</th>
<th>SECTION</th>
<th>NAME OF OFFENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>304 – B</td>
<td>Dowry death</td>
</tr>
<tr>
<td>2</td>
<td>313</td>
<td>Causing miscarriage without woman’s consent</td>
</tr>
<tr>
<td>3</td>
<td>325</td>
<td>Grievous hurt – wife beating</td>
</tr>
<tr>
<td>4</td>
<td>354</td>
<td>Assault or criminal force to woman with intent to outrage her modesty</td>
</tr>
<tr>
<td>5</td>
<td>366</td>
<td>Kidnapping, abducting or inducing woman to compel her marriage, etc</td>
</tr>
<tr>
<td>6</td>
<td>373</td>
<td>Buying minor for the purpose of prostitution, etc.</td>
</tr>
<tr>
<td>7</td>
<td>376</td>
<td>Rape</td>
</tr>
<tr>
<td>8</td>
<td>376- B</td>
<td>Sexual intercourse by husband upon his wife during separation</td>
</tr>
<tr>
<td>9</td>
<td>376 (2) (b)</td>
<td>Rape by public servant with woman in public servant’s custody</td>
</tr>
<tr>
<td>10</td>
<td>376 (2) (h)</td>
<td>Rape on a woman knowing her to be pregnant</td>
</tr>
<tr>
<td>11</td>
<td>498 A</td>
<td>Husband or relative of husband of a woman subjecting her to cruelty</td>
</tr>
</tbody>
</table>

3.2.3 Special Laws in India for Protection of Women Framed Before and After Independence:

The law framers were aware about the oppression suffered by women in male dominated society. So certain laws were enacted for protection of women, over and above the Constitutional provisions. Some of them are as follows:

a) Women specific legislations:

2. The Dowry Prohibition Act, 1961 (amended in 1986)
3. The Indecent Representation of Women (Prohibition) Act, 1986
5. Protection of Women from Domestic Violence Act, 2005
6. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act), 2013.
b) **Women related legislations:**
   1. The Indian Penal Code, 1860
   2. The Indian Evidence Act, 1872
   3. The Indian Christian Marriage Act, 1872
   4. The Married Women's Property Act, 1874
   5. The Guardians and Wards Act, 1890
   6. The Workmen's Compensation Act, 1923
   7. The Trade Unions Act 1926
   8. The Child Marriage Restraint Act, 1929
   9. The Payments of Wages Act, 1936
   10. The Payments of Wages (Procedure) Act, 1937
   11. The Muslim Personal Law (Shariat) Application Act, 1937
   12. Employers Liabilities Act 1938
   13. The Minimum Wages Act, 1948
   14. The Employees' State Insurance Act, 1948
   15. The Factories Act, 1948
   16. The Minimum Wages Act, 1950
   17. The Plantation Labour Act, 1951
   18. The Cinematograph Act, 1952
   19. The Mines Act 1952
   20. The Special Marriage Act, 1954
   21. The Protection of Civil Rights Act 1955
   22. The Hindu Marriage Act, 1955
   23. The Hindu Adoptions & Maintenance Act, 1956
   24. The Hindu Minority & Guardianship Act, 1956
   25. The Hindu Succession Act, 1956
   27. The Beedi & Cigar Workers (Conditions of Employment) Act, 1966
   28. The Foreign Marriage Act, 1969
   29. The Indian Divorce Act, 1969
   30. The Contract Labour (Regulation & Abolition) Act, 1970
   31. The Medical Termination of Pregnancy Act, 1971
   32. Code of Criminal Procedure, 1973
   33. The Equal Remuneration Act, 1976
34. The Bonded Labour System (Abolition) Act, 1979
35. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
36. The Family Courts Act, 1984
37. The Muslim women (Protection of Rights on Divorce) Act, 1986
38. Mental Health Act, 1987
41. Juvenile Justice (Care and Protection of Children) Act, 2000
42. The Child Labour (Prohibition & Regulation) Act
43. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
44. The Prohibition of Child Marriage Act, 2006

3.3 CONCLUSION:

The Vedic scholars used to run the society by balancing it on four wheels of morals i.e. dharma, arth, kama and moksha (religion, acquisition of wealth, enjoyment of wealth and liberation respectively). It was because the religion had weaved all the activities of society within it, the members of the society enjoyed basic human rights such as right to life, liberty, equality and dignity. In spite of society being divided in class system (varna), women enjoyed equal status with men. The Vedic period has many examples of heroic women who were warriors, thinkers, spies, etc. Thus free minded Vedic society which honoured women from their birth, gave them education, equal status, dignified married life, property rights and above all worshipped them as deities can be termed as golden age for women. In comparison, the epic period witnessed reduction in feminine glory. The patriarchal system had started showing its signs in the society. The society had started binding women in limits and subjugating their character. This era had more examples of polygyny as compared to polyandry. The women had to prove their chastity all the time. However, women were able to make remarkable position in the society within the limits set for them. The Smriti period still showed the downfall in the position of women due to certain controversial

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verses of different philosophers. The women were expected to follow the code of conduct prepared by men, and society cursed those women who could not follow it. Thus Dark Age was believed to be descended for them. Jainism and Buddhism made women their followers and also accepted them as nuns, but could not help women ameliorate their position in society. During this period, women had started acquiring secondary status. Polygamy and purdah became the integrated features of Rajput and Mughal era. Mughals protected and respected womenfolk and gave them luxurious lives, but could not give them social and political rights. In Rajputs, lives of women were full of sacrifices and were majorly used as tools for expanding their kingdoms and thus achieving political strength. The British rule in India did many social reforms for ameliorating the position of women like introducing women education, banning the practice of Sati, and gave legal sanction to widow remarriage and inter-caste marriages. But the positive steps taken by them had no long lasting effect due to social evils like polygamy, purdah, female infanticide, etc which were deeply percolated in the social structure. Many historians even call British era in India as ‘Kaliyug’ or dark age due to violation of human rights in general and women’s rights in particular. In spite of subjugation of their rights, women contributed remarkably in freedom struggle. The Constitution of India had declared equality between men and women as a fundamental criterion for progressing Indian society but socio-cultural forces have sanctioned many personal laws in the country due to which we have different provisions for marriage, divorce, property rights, etc, in different religions which are directly affecting the rights of women. Thus in reality, women do not have equal status with men. Thus several members of Constituent Assembly such as Minoo Masani, Rajkumari Amrit Kaur and Hansa Mehta had mentioned at the time of framing of Constitution that, “The personal laws based on religions keep India back from advancement and it divides nation in water tight compartments.”

84 Minoo Masani: (1905-1998) was an Indian politician and a leading figure of Swatantra party. He was a member of Constituent Assembly of India.
85 Rajkumari Amrit Kaur: (1889-1964) was an eminent Gandhian, a freedom fighter, a social activist and a member of constituent Assembly.