Chapter – II

Historical Position of Women Under Different Periods
HISTORICAL POSITION OF WOMEN UNDER DIFFERENT PERIOD

VEDIC PERIOD

One way to judge the status of a nation is to study the status of its women. In reality the status of women represents the standard of culture of any age. The social status of the women of a country symbolizes the social spirit of the age. However to draw a conclusion about the position of women is a difficult and complicated problem it is therefore necessary to trace his position in the historical perspective in the course of Indian history form prehistoric to modern times there were distinct stages of the rise and fall in the status and role of women.

The recorded evidence found in the same period and in to same province have expressed opposite views about the worth, nature and importance of women. According to one school a woman is the best gift of God to man. She brings prosperity when she is properly treated and respected and is called Laxmi, the goddess of wealth and prosperity. The second School of thoughts hold the view that the best way to reach God is to avoid women. Where the women are held in reverence, there do the Gods reside, is an old Sanskrit adage. A society grows if the woman grows, if they partake of the spirits. Of progress for they are the proverbial domestic legislators they are the matrix of social life.

A proper assessment of Indian women necessarily involves a brief resume of the cultural background of Indian women through the ages. Unlike her western counter part, the Indian Women is part of a culture which goes back into the part. If she has a particular conviction or acts in a specific manner

2. Ibid P.17
it is due to the pattern that has been ingrained in her by the fairly stable social structure of a thousand years.

The highest place has been accorded to women in India religious and philosophical thought. The primordial one is conceived as a harmony of *Purusha* (male). The concept of ‘*Ardhanarishwara*’ describes God head as half female and half male. The *Shakti* cult is centered on the superiority and destructive strength of the females. Rivers and streams, down and twilight, flowers and seasons knowledge and music are conceived of as feminine.

The position of power, status and disabilities of the daughter, the wife, and the widow went on changing in course of time. Women enjoyed considerable freedom and privileges in the spheres of family religion and public life, but as centuries rolled on the situation went on changing adversely. There are recorded evidence to show that women was not always rights nor was the constantly in subjection. There is however greater evidence to show that contrary was equally true, for many centuries her position continued to be one in which she did not have either legal or social rights to make her independent of the family into which she was born or married.³

**Vedic period**

The women in the Vedic period it is observed enjoyed equal status with men and independence in action. Not only they had the place of honour, but were entitled to participate freely in social activities. They were allowed to pursue the academic alignments and share the family life with full vigor. They were free to select their conjugal partners and exceeded free will in entering into the matrimonial bondage.

Women were not only highly educated, Cultured they proved to be good teachers in the upbringing of their children in all spheres of life.⁴

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The Vedic India was inhabited by the highly cultured and civilized people of the Aryan race. Those great Aryans were not the original residents of India, but crossover India and settled herein. The Aryans were the authors of the Vedic literature and were the first among the many races inhabiting India. They accepted the authority of Vedas and followed the Vedic rules. These rules consisted of moral clinical and religious injunctions. To the Aryans whatever was contained in the Vedic text was “Dharma” and the “Dharma” is the simplest sense meant law to them. The elevation of the feminine principles pervades Vedic thought. The social structure in the Vedic period admitted the equality of women. Hymn XXI of the Rig Veda extols the virtues of women as each greater than those of men.  

Through out the Vedic period women was given a status equal to man’s to participate in sacrifice sites, to undergo the investiture ceremony, and to be man’s equal in upholding ‘Dharma’. She could fight wars join in festivals take part in philosophical discussion like Gargi and Maitreye or even remain unnamed to if she so desire. In the Vedic period women participated in all the fields like men and took part in every sphere of human life. During that period, women enjoyed a fair amount of freedom and equally with men. Women studied in Gurukul and enjoyed equally in learning Vedas. For a long time, girls in higher societies were allowed to undergo Upnayanna rite. The great women like Ghosa, Apala, lopamudra, Visvara, Gargi, Atcyi, Indrani, Yamig and others had distinct equalities of art, music, dance and even fighting in the battle. Purdah was not in the Vedic period. In the matter of selecting the life partner in marriage, women had equal rights. The example of polygamy was rare and mainly confined to ruling class. Dowry system was prevalent in rich and royal families only in the form of movable gifts. A widow could marry again or could undertake the recourse of leverage (Niyoga). The Indus valley civilization recorded the beginning of the cult of worshipping earth or Goddess.

6. Ibid p.1
But there still are certain restrictions on women’s right. In Vedic times there was no determination between boy and girls. There were two classics of girls (i) the Brahm-Vadini student, who donned the sacred thread, constant reminder of the holy vows, tend the fire, do the begging for alms with in there own parental homes, and (ii) the Sadyo Vadhey who are given only symbolically and formally immediately before marriage. Men used to regard women as partners in managing the affairs during the Grihasta, Vanaprastha, and Sanyasa ashram in life and consequently women enjoyed a quality of life comparable to that of the men.  

Every Hindu believes in the authority of the Vedas and in the cycle of birth and rebirth, which is an interminable cycle. This kind of faith is imbibed in the character of Hindu, consciously or unconsciously and it is reflected in him in various form and practice. For a Hindu the authority of Vedas is unimpeachable paramount, final and irrevocable. It is correct to say that not a single case of literary adultery has been reported in the contents of the Vedas until now. The four Vedas are neither mutable corrigible. Because of great authority of Vedas as a screed Hindu text it is claimed to be the first source of orthodox Hindu law even today and all the since smites and digests and commentaries on the smritis owe either their origin or development to it. Actually the Vedic literature serves as a path finder to a Hindu to seek his joy of life. Now it is judicially acknowledge view that who believes in the authority of life is a Hindu.

Position of The Daughter

The position of women in Vedic period can be judged by the way in which the birth of a girl was received. None of the hymns of Rig-Veda considered the birth of daughter as inauspicious. But we find prayers for the

8. U.C sarkar’s An introduction to Hindu Law, p.1
birth of a son in *Atharva* Veda, witch says the birth of a girl grant it else where; hare grant a boy.\(^{10}\) We do find a frequent longing for a male child in the *Rig-Veda*, while during the Vedic Age there were some parents who would perform *kanyasraddhas* on the second day of the moon for the blessings of getting learned and capable daughter. Beside it was recommended that *Matrika-Puja* should take place first, the *Kumar-Puja* was to be performed at the end of all Vedic rituals.\(^{11}\)

Initiation of girls was common girls were educated like boys. Like their brothers, the girls wore the saffron thread and use to pass through a period of *Brahmacharya*. After his *Upavita* Ceremony the Vedic women carried on the study of the Vedas, recited Vedic mantras, performed Vedic rites and naturals; under took Vedic-Vows and did what ever was necessary for the proper performance of *Yagayajna* just like a son. According to *Sarvantrakramanika* there were as many as twenty women who were credited with having composed hymns of the Rig-Veda. Many of them become distinguished poetesses and were honored by having their poem included in Vedic literature. Some of the high class women were highly educated and they actively participated in intellectual and philosophical discussion.\(^{12}\)

Marriages of girls used to take place at the age of understanding between 14 to 17 years and that too with their consent. The educated girls had naturally an effective voice in the selection of their life partners. Pre-puberty marriages were unknown as there were *Swayamvara* marriages where women were given the chance of selecting their partners. There were also many instances of love marriages. It can be concluded that both men and women had

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10. *Athavva* Veda VI 2-3
12. *Ibid* p.45-46

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considerable freedom in selecting their partners though parents often arranged a suitable match.\textsuperscript{13}

If for any reason a daughter remained unmarried she was expected to live under the protection of her father, and after her father's death under the control and protection of her brother. Otherwise she was on her own. Perpetual tutelage of women is of a later origin.\textsuperscript{14} The position of a daughter during the Vedic period did not suffer much from authoritative interference. She was socialized with a high degree of modesty.\textsuperscript{15} She was expected to have tolerance, patience, submission to and an identification of her personality with her husband's. She in turn received affection consideration and regard. Though marriage was of great social and religious significance it was not mandatory as there were some reference to girls who remained unmarried.\textsuperscript{16}

\textbf{Position of Wife}

The Vedic society also was patriarchal and male dominated. The household was ruled by house lord, who wielded almost absolute control over all other members of the family and to him his wife or wife's were bound by strict tie of life long duty and obedience.

Marriage in fact was a religious necessity for both men and women, but neither could reach women without being accompanied by his or her duly married spouse. The Vedic women being Sahadharmini or Patni had the fullest right to participate in all the religious ceremonies with her husband she could also perform sacrifices independently and was not regarded as an impediment in religion pursuits. Her position was an honored one in the family. She was joint owner of the household with her husband though in actual practice she was

\textsuperscript{15} M.N. Banerjee," Hindu Family and Freudian Theory" \textit{Indian Journal of social work} 1944-45 pp-180-186

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the subordinate partner. This was because of the prevalence of a patriarchal family system as it is today. Her social status was not only of a loving wife but also of a loving mother. She was desired by the Vedic sages as an ornament of the home. Her social status was of an absolute equality with man in the eyes of religion.\textsuperscript{17}

The \textit{Dharmashastra} has raised a chaste wife to the rank of a Goddess. Out of love and veneration she has been placed above the father and teacher. The \textit{Panchatantra} mention that the maintenance of a home is known by the culture of the wife without her a home is like a dreary forest. \textit{Rig-Veda} accords a high position to women. As a mother the Vedic women held a far more venerable position than a man as the father.

During this period asceticism was not of great prominence women had the right of free movement. Polygamy prevailed to some extent among the rich and royal families but ordinarily monogamy was the rule. The main disadvantage from which the wife suffered in the Vedic age was that she could neither hold nor inherit property rights in some kind of properties which women slowly acquired were assimilated with their rights in their position of bride price probably as being the only existing type of women's property.\textsuperscript{18}

In the post Vedic period women were known to take up teaching career. She was accepted as an \textit{Acharya}. Some of the lady teachers were specialists in theology and philosophy, the most obstruce and difficult subjects. Women had privilege of adoption e.g. \textit{Vadharimati} adopting \textit{Haranyanantsa} and \textit{Loppada} adopting \textit{Santha}, the daughter of \textit{Dasaratha}.\textsuperscript{19} The position of women during the Vedic age is clearly manifest from \textit{Suktas} of revered \textit{Nari Risi} or women seers in the \textit{Rigveda}. Women as daughter's sisters wife and mother had equally honoured places in the family society and the state alike. Thus in all aspects

\textsuperscript{17} Supra Note 14, p-338-39  
\textsuperscript{18} Supra Nota 1, p-23  
\textsuperscript{19} Venkatarayappa, \textit{Feminine Roles}, p.36-37(1966).
they had equal rights with men and were their equal partners, friends and helpers all through.

Position of Widow

Though the Hindus of the Vedic period had a patriarchal society, the women in general did not suffer from disabilities which are characteristic of later period. This is particularly true of widows. Widows of this age were permitted to remarry the practice seems to have been accepted as normal from the Vedic period onwards. A number of references are found in the Vedas to show that widow remarriages was common, though the re-married widow could not aspire for the status of ‘Grihini’ wife where she could become the mistress of the house. The use of the word ‘Parapurva’ a woman, who has had a second husband, proves that widows were remarried. The word ‘Didhisha’ used in the Rig -Veda means the second husband of a woman. This shows that marriage of widows was not opposed the custom of a widow marrying the brother of her deceased husband seems to be common, Hence the word ‘Devara’ which means the woman’s brother-in-Law, literally means the second husband.

The institution of Niyoga (Levirate) came into Aryan society form some non-Aryan source. Under the system of Niyoga, a widow or a woman whose husband was not virile was allowed to have conjugal relations with her brother-in-Law, or some other near relation, till she gave birth to an offspring. A widow was allowed to have two sons through Niyoga. A son by levirate was always preformed to a son by adoption.20

We do not find any reference to sati or burning of widows in Rig-Veda. On the other hand Vedic hymns refer to remarriage of widows rather than their self-immolation. The burning of the widow on the funeral pyre of her husband might have been practiced by the early Aryans. But in reality in the Rigvedic

20. Supra note 18 p. 144-145
period the widow was made to lie by the side of her dead husband. She was however, asked to come down and a prayer was offered that she be granted a prosperous life enjoying the bliss of children and wealth.\(^{21}\)

Attachment of importance to the birth of a male child becomes responsible for the gradual decline in the status of women. The widow was given an inferior position as she was unfortunate enough to lose the all-powerful protecting male partner.

The custom of widow remarriage as we understand the term today did not exist. But even then we have some references to widow remarriage with the younger brother or with the net kinsman of her deceased husband. It can only be said that her life was not bound by so many restrictions and austerities as it was in the late days. She had not to ascend her husband’s funeral pyre.\(^{22}\)

In other words, sati system was not in practice. The right of *Niyoga* shows how a widow was very liberally treated in those days. The legal status of the widow was the same as that of the wife. The widow however, did not have the right to hold property. But then, even a married wife did not possess that right.

**Position of Women Before The Advent of Islam**

In the 6\(^{th}\) century the greatest event of the history of mankind which shook the very basic ideals and concepts of man and brought about a complete revolution in his thoughts and views and a total change in his character, was the high spirited and high hearted proclamation of the Prophet hood of Hazrat Mohammad (Peace be upon him), the result of this revolution was that it not only took different turn in man’s thought, but also gave a new direction to his life. One significant aspect of this new trend of thinking was the concept of

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\(^{21}\) *Supra Note* 18 p. 118.

\(^{22}\) *Supra Note* 17 p. 23-24.
women which under went a complete change and thereby established the relationship between man and woman on entirely new grounds.

Before the advent of Islam, the world has degraded the woman and had almost outcaste her. She was thrown in such deep abyss that there seemed no hope of her redemption. Islam boldly remonstrated against this injustice and emphasized that life needed both man and woman. Woman is not created to be derided and cast a side. Like man, woman also has her purpose and rights to exist. The arrival of Prophet Mohammad (peace be upon him) and his proclamation of Prophethood, the history of woman was no doubt the history of subjugation and oppression she was under estimated and condemned as a low and mean creature and was regarded as the root cause of all evils and disasters.

Instructions were given to be careful about her and to avoid her like snake and scorpions. She was bought and sold like animals. She did not enjoy any absolute or independent position in the society and was made subservient to man. She was denied all rights and had to live on the pity and mercy of man. In such a dark period of the history of woman, Islam raised its voice so vehemently that the whole world reverberated with it. It was the announcement that the discrimination which the world has made between one man and the other is false, absurd and baseless. The whole mankind is the offspring of the single human soul. Originally all have the same descent. No one is noble or mean, or low or high by birth. All are equal and enjoy equal position. Any kind of distinction between them on the grounds of family status, race, colour, tribe, region, language, occupation or nationality is null and void.

The teachings of Islam revolutionized the thinking of those men who buried their daughters alive and felt no shame in doing so. They begun to love and nourish their daughters, those who refused to shelter their own daughters, became the guardians of others, daughters. Those who were devoid of love and affection for women, now loved and cared for their.
The most important thing in Islam has assigned woman a prominent position at social level. Hence she can lead an honoured and dignified life without becoming a victim of any inferiority complex. She can, in fact, offer her fullest cooperation to man in building up a chaste and virtuous society while contributing her potentialities. Islam does not make any distraction between man and women but both are equal before law.

Women Human Rights In Islam

Man and woman are equal parts of humanity having equal dignity and social and religious status. Before the advent of Islam women were not treated as a human being with an independent identity of their own. They were deprived of almost all kinds of rights. Islam brought a complete change in the status of women and stopped discrimination against them. According to Islamic teachings the women should not be treated as entirely dependent on men, rather both have their own independent identity.\(^{23}\) The Holy Quran states:

"The one who does good deeds, whether man or woman, provided that the one is a believer, will enter the paradise and they will not be wronged in the least of their rightful reward."\(^ {24}\)

The second caliph Umar Farooque\(^ {25}\) described the position of Women before and after advent of Islam. He says:

"By God, in pre-Islamic period women had no position in our society and could claim no rights until Allah specified all her rights in the Holy Quran."\(^ {25}\)

\(^{23}\) M Saud Alam Qasmi, Human Rights in Islam, Publication Division, Aligarh Muslim University, Aligarh, p.37, (2005).

\(^{24}\) The Holy Quran, Al-Nisa, 124

\(^{25}\) Muslim, Kitabul Nikah.
Upliftment of the status of women and granting them the right to lead a
dignified life in the society can rightly be counted among the greatest
contributions of Islam in the area of social reform.

Right to Live

Before the advent of Islam the Arabs held the women in abject contempt
and considered them nothing more than chattel. The birth of a daughter was
considered as a matter of disgrace and social stigma. In some cases even they
went to the extent of burying them alive. The Holy Quran condemned this evil
practice in the strongest terms. It says:

"When any one of them is given the good news of a daughter, his face
grows dark after this news and he chocks with inward gloom. He hides himself
from people because of this disgrace, asking himself whether he should suffer
his daughter with disgrace or bury her alive, what an evil judgment they
have".26

Female children were deprived of their very basic right to live. Unfortunately this cruel practice was not confined to the dark ages of pre-
Islamic Arabia, it is still being followed in the enlightened modern times.
Using the advanced technology the gender of the foetus is determined and the
foetus of the female child is killed in the mother’s womb and the parents are not
even charged for taking life of their daughters. In no way it could be said to be
less heinous than the female infanticide prevalent in pre-Islamic Arabia. Islam has
no patience with this kind of crime against humanity and condemns it in the
strongest terms. The Holy Quran says:

"When the female infant buried alive is asked, for what crime she was
killed"?27

27. The Holy Quran: Al-Shams, 8-9
Islam stopped this inhuman practice completely and put the women at the same footing as the men in the matters of human rights. Muslims were directed to take special interest in bringing up their female children and were assured great recompense for doing so. The Holy Prophet (PBUH) promised paradise as a reward for bringing up female child and said:

"Whoever takes care of his two girls till they attain maturity, he and I will come on the Day of Judgment like this. Saying he joined his fingers."^28

A Muslim cannot aspire for a greater honour and reward.

Right to Education

Islam lays great emphasis on the acquisition of knowledge and makes it necessary for every Muslim, man and woman, to seek knowledge. But in spite of this, education of Muslim women in particular is badly neglected today. Needless to say that women's education is essential to improve the living conditions of women and also for the revival of Muslim Ummah. Education is not only a fundamental right of girls but also the pressing need of Muslim society today^29. Giving due importance to education of girls the Holy Prophet Muhammad (PBUH) said:

"Whosoever brings up three daughters, impart them good education, arrange their marriage and behave with them nicely, he shall be reWARDED the paradise."^30

This does not mean that the Prophet was not giving due importance to the education of male children. The reason behind this statement is quite simple. Educating a boy means education of only one person. While educating a female is in reality education of entire family, as children are nursed and brought up in the

^28. Muslim, Abwabul Birr.
^29. Supra Note 23 p.45
^30. Tirmizi, Abwabul Birre Walsilah.
lap of women. An educated woman therefore, is the best security of the education of future generation.

Right of Equality

Islamic Shariah considers both the spouses complementary to each other. Mutual respect, love and affection and concern for the comfort of each other are the sure guarantees of a pleasant life. The Holy Quran says:

"They are like garment to you and you are like garment to them".  

This is an extraordinarily portraiture to express the intimacy that exists between the husband and wife and their suitability for each as the garment fits the body and no room is left in between. The husband is the best protector of wife and wife is the best safeguard for the husband against the sin. Islam has assigned equal right and responsibility upon the spouse. The Holy Quran says:

"Wives have the same rights as the husbands have on them in accordance with the generally known principles."  

The Holy Prophet Said

"A man is guardian of his family and responsible for them, a wife is a guardian of her husband's house and she is responsible for it".  

A companion of the Holy Prophet (PBUH) requested him as to what is the right of one's wife on her husband? The Prophet replied:

"Feed her as and when you feed yourself, cloth her as and when you clothe yourself, do not beat on her face, do not abuse (or curse) her and do not separate yourself from her except inside the house".  

32. Ibid, 228.  
33. Bukhari, Kitabul Ahkam.
Similarly the husband should not hate his wives neither insult her nor cast any doubt on her chastity on false and flimsy grounds. The Holy Prophet commanded:

"Fear Allah with regard to women, because you have taken them in the trust of Allah and made their private parts lawful with the word of Allah".  

Right to Property

According to Islamic Shariah the property of spouses is separate and like husband the wife has also right to manage her property independently. Though the husband is responsible to bear the cost of his wife's subsistence, but he is not supposed to merge her property with his own. The Holy Quran says:

"The men shall have their due share according to what they have earned and the women shall have their share according to what they have earned."  

Islam fully acknowledges the right of independent ownership of a woman. She has full right to buy and sell the property or give it on contract.

The right of independent ownership of wife was not accepted even in English law till the late nineteenth century. According to the English common law:

"All real property which a wife held at the time of a marriage became a possession of her husband. He was entitled to the rent from the land and to any profit, which might be made from operating the estate during the joint life of the spouses. As time passed, the English courts devised means to forbid a husband's transferring real property without the consent of his wife, but he still retained the right to manage it and to receive the money which it

34. Abu Daood, Kitabul Nikah.
35. Muslim, Kitabul, Nikah.
produced. As to a wife's personal property, the husband's power was complete. He had the right to spend it as saw fit ". 37

Islam does not forbid the women from taking up employment, but it certainly considers her role as the householder to be much more important. However, if a family finds it hard to live on the husband's income alone and the wife is in need of employment, she may take a suitable job after consultation.

(B) MEDEVIAL PERIOD

From about 1500 B.C there were perceptible changes in the women's status due to various reasons, among which the most important was the denial of education. The down of paranoiac period witnessed a significant change in the role of Hindu women and a concept begun to get strength that the role and activity of the women had to be limited and restrained to the basic cuds of Hindu existence. The current was flowing then in different directions. The men wanted their dominance and making the Hindu women subservient to them. Neither they were left with freedom of choice they become only the means for Hindu men to attain their end. The women lost their past status and glory. They made them to feel subjugated at men's whims. The concept of dual existence and rythm of cycle of birth, and death and rebirth, the theory of pind-dan threw the Hindu women to a place of subservience. What ever they received in the Vedic period the begun to lose it here. The women become dependent on men. The marriage also lost its independent value. It failed to secure a firm grip in the changing events of Hindu life. The role of Hindu women in conjugal right begun to be confined to the kitchen and producing of son. The daughter become un welcome to the then society.

With the lapse of time the position of the daughter also changed. During this period there was a gradual decline in women's education. Girls were not

allowed to go to the houses of the preceptor or centers of education but were taught only by near relative like father, brother, or the uncle. Therefore only the girls of rich and cultured families received religion and other training. As a result there appeared a tendency to curtail the religious right and privileges of women in general.

The desire to get a son to provide for the future became quite intense and daughter came to be looked upon as encumbrance and the marriage age of the girls continued to be around 16. They had some voice in the selection of their life partners. Love marriage was also common. Among the Kshatriyas, Swayamvara was fairly common in practice. The social and family status of the daughter deteriorated in the post- Vedic period. Her proprietary right was also the same as it was in the Vedic age. Even so far as her right in the separate property of the father was concerned, she was not altogether ignored.  

The following line aptly depicts the position of the daughter; "A wife as a comrade, a daughter is a misery and a son a light in the highest haven."  

According to the Gautama Samhita, a girl should be given in marriage before she attains puberty. He who neglects it commits sin. Some declare that a girl should be given in marriage before she wears clothes. Vasistha samhita also says the same things.

Position of Wife

There were gradual changes in the position of women in this period. Women were not allowed to participate in the performance of sacrificial ceremonies. The eventually began to lose touch with the Vedas and were pushed back to domestic duties. The study of Vedas became the monopoly of men. Women were ceased to attend public meetings having lost their

38. Supra Note 18 p.340
39. Supra Note 01 p. 26
40. Vasistta Samhita, XVII- 70-71 quoted by K. Gill, Hindu Women Right to Property, in India p.24-25
importance as comrades of men in public activities, they came to be honored merely as mothers.

The reason for the deterioration of their status was the inter-marriage between the Aryans and the Dravidians. The non Aryan wife, with her ignorance of the Sanskrit language and Hindu religion, obviously as the Aryan consort. The black non Aryan wife could be her husband's associate in pleasure but not in religious rituals, say several authorities. The discontinuance of Upanayana, the neglect of education and lowering of the marriage age produced disastrous consequence regarding the position and status of women. Early marriage became a hindrance in the education of girls. Women came to be regarded as being of the same status the Sudra. During this period on the one hand women was being idealized and on the other she was given a very degraded status.

Over the property of her husband it was generally considered that women had no right during his lifetime beyond the right of maintenance and residence. According to the mitakshara law, in the matter of partition, a wife was allowed to get an equal share with her own son or sons where the division took place in the lifetime of her husband. But she could not herself demand a partition. She could get a share only if the husband himself separated from his sons during his lifetime or if the sons claimed partition during the father life time. Though a woman had her own property called Stridhana, she was given only limited ownership. It seems the spirit of Hindu law was not to allow women independence as regard the disposing of property, but had the right of possession and right of enjoyment. It can be not said that the social status of the wife was not satisfactory. However her status was improved in the sphere of proprietary right.

41. Supra Note 14-p.345
42. Ibid p.348
43. Ibid.,
44. Supra Note 26 p. 29-30.
Position of Widow

The widowhood was the greatest calamity that could befall a woman. Death of husband however, did not mean an end to the widow’s life too. The custom of sati, or self immolation by the widow on the husband’s pyre, has little sanctions in the Ramayana. None of the wives of Dasaratha or Ravana are represented as joining their husband on the pyre. Widow was considered both undesirable as well as inauspicious. The position of widows become more pitiable because the sutras ordered a widow to avoid for the duration of a year, the use of honey, meat spirits and liquor as well as salt and to sleep on the ground. At the expiry of six months, she could with the permission of her Guru, bear a son by her brother-in-law in case she had no son. The custom of Niyoga came into existence during this period. Remarriage are not found among the Aryans widow but there are instances of non-Aryan widow marrying Aryans. The Mahabharata says a child widow can remarry and her sons by the second marriage can offer obligations to the manes. The children by the second marriage of a widow were given social as well as religions status. Child widows, therefore married without fear of social ostracism. During this period Niyoga was preferred to widow re-marriage.

The rise of Brahmanism during the smriti period became detrimental to the status of women. The Hindu lawgivers of this period imposed certain duties on widow, who did not ascend the funeral pyre and chose instead to survive the husband. All the sages prescribed a life of strict discipline and penance on such widows or their whole life.

The custom of Niyoga was condemned by smriti writers when chastity became the main qualification of marriage. Manu disapproved the custom of ‘Niyoga’ and declare. That it was fit for cattle only. Although it is still preached
in some communities in India, the custom appears very strange and unacceptable to the modern mind.\textsuperscript{45}

Widow marriage was prohibited. The practice of ‘sati’ was recommended by many of the later authorities and was well established by the end of the 6th century A.D. the practice prevailed as early as Alexander’s invasion about 325 B.C. Trvellers like Strabo, Megasthenes, and Diodarurs who accompanied Alexander, allude to this practice. The law givers forced the widow to lead the life of austerities fasting and abstinence from pleasure. Manu the Hindu law giver say.

1. Until her death, let her patient of hardship, self controlled and chaste and strive to fulfill the most excellent duty which is prescribed for wives who have one husband only.

2. At her pleasure let her emaciate her body by living on pure flowerer roots and fruits but she must never mention the name of another man after the husband has died.

3. A virtuous wife, Manu says “again is one who after death of her husband contently remains chaste, reaches heaven though she has no son, just like those chaste men”.\textsuperscript{46}

Later on the role of women in Mauryan society is of some significance. It was taken for granted that their position was subordinate to that of the men. This is particularly the case in the type of society envisaged by the Arthaastra Brahmanical treaties were usually severe with women who in later works regarded without equivocation as an inventor species.\textsuperscript{47} The Buddhists were much more human in their attitude. Because the women were not independent, therefore it was observed that. “The decision to allow nuns in the Buddhists order was one of tremendous importance where as there Brahman cal counter

\textsuperscript{45} A.S. Altaker, op cit, p.146-149
\textsuperscript{46} Manu V. 157, 158, 160 quoted by R.M. pal, Women in Manu and His Seven Commentators, p. 221-227 (1962).
\textsuperscript{47} Rohila thapar; Ashoka and the Decline of the Mauryas” IInd ed. 11th impression, p. 87(1990).
parts would not even admit of education for women. It has been suggested and
with some justification that for a women life in Buddhist society was not as
prying as life in brahmanical society, since she was not regarded primarily as
child bearer. The birth of a son was not necessary to Buddhists rituals as it was
a Hindu ritual since Buddhist society accepted unmarried women, the women
tended to be less concerned with findings husbands and consequently less
subservient. All the same marriage was still regarded as the most suitable
occupation for a woman. Working women were restricted is their work. The
only possibilities seem to have been those of performing in circuses and plays,
working as domestic slaves either in private homes or in royal places, and as a
last resort setting them selves up as prostitutes and courtesans. At a later state
when Hindus ideas on this matter began to infiltrate into Buddhism the
women’s importance even within the home, declined and the older
Brahmanical attitudes were revived.48

Women of India rose in the heights of knowledge and realization,
worked with men in all spheres of life to the fullest freedom as well as to
untrammeled self dependence and self determination. Such bold and blessed,
self-confident and independent women found than selves suddenly confined
within four walls of dark and dreary homes, with their minds desolate and
depressing with almost all their fundamental birth rights totally or almost cult
off. They were deprived of any rights to justice, freedom education, equality
and were degraded domestically, socially legally economically politically and
in every other way they came to be called Abala (The powerless) or
GrihapinJarakokila (cuckoo of the cage of the house) and subject to the most
derogatory maxim. ‘Putrarthta Kriyate Bharya’ (women have to be taken in
marriage for procreation only).49

48. Ibid
49. R. Chaudary; Status and Role of women Great Indian women through the Ages, in role and status
of women in India society Calcutta, firma KLM private Ltd 1978 p.31
There are contradictory views regarding the position and status of women. While some of the earlier authorities have described women as abodes of more evil than good, the progressive and liberal thinkers are in favour of women. They have gone to the length of worshipping her as a living image of the Divine Mother: in menu smriti we find two contradictory statements;

1. Where women are honored, there gods dwell
2. A women is to be protected and sheltered all through her life by her male relatives by the father during her childhood, the husband when a house wife and the son during her widowhood.

The position of women in all other sphere, except the proprietary rights continued to be deteriorating in this period. Most of the causes responsible for the degradation of women during the last period continued to operate in this age also.

The age of marriage was fixed at eight. The Upanayana ceremony of girls was completely discontinued. The commentators were of the opinion that the parents would be committing sin, if the girl’s age exceeded eight years. Only in kshatriya families girls were married at the age of 14 or 15. Girls of rich families, however still received education and a few of them extinguished themselves as poetess and critics the ignorance of most giris created a tendency among men to treat them lightly and pass cynical remarks about their weakness and worthlessness.  

In Mughal period the position of women in general was subordinate to men. “The functions and position of women were distinctly subordinate and in the long run came to be understood as the service of the male and dependence upon him in every stage of life. As a daughter, a woman lived under the worship of her father, as a wife under the tutelage of her husband and as widow (that is if she was permitted to survive her husband) under the care of her eldest

son. In a word her life was state of perpetual worship and the social laws and customs stamped her with a sort of mental deficiency. The girls were considered a liability right from the time of their birth. A mother giving birth to a number of girls in succession was despised. Amongst some of the Rajputs cast the girls were killed at the time of their birth.

POSITION OF WOMEN UNDER MUGHAL PERIOD

With the advent of the Mughals in India, the position of women underwent many moderate changes, as they brought with them many Islamic ideas and practices in favour of women. The Muslim gave their ladies a more respectable position by enforcing the system of purdah, and thus safeguard the honour of their ladies buy regularizing the customary dower and property rights, the economic position of Muslim ladies was tried to be leveled by recommending the marriage of widows and raising their position, the Muslim rulers had contributed for the upleftment of women.

Dower or Mehar

Dower or Mehar has been regarded as an essential ingredient of a Muslim marriage without which no marriage is considered lawfully in Islam. By dower is meant a certain sum of money paid by the bride groom to the bride immediately after ‘Nikah; the system of giving Mehar (dower) is an ancient custom traced back to the pre Islamic day in Arabia, where a price for a bride was paid at the time of marriage. During Mughal age, like today the amount of dower was fixed by mutual agreement of the couple concerned, but in practice the guardian considered it their duty to settle the amount and the couple were informed of it for getting their final consent, and it was communicated to the religions heads (Qazi) prior to reciting Nikah.

52. Mishkat, Vol. III, 142, p-38-39, The Holy Quran Says “if the intention of a husband is not to pay the dower, the marriage is void,” Text IV, Surah IV, Verse IV.
Chapter-II

So far as the fixation of amount of dower is concerned Islam has not specified any limit on this account and the only object is to make the wife economically and financially sound so that she may not find herself helpless against her husband, and feel confident enough to defend her right. However Islam enjoins that the amount of dower should be in conformity with the financial position of the bride groom.\textsuperscript{53} It is important to mention that though high dower were preferred, people in general, were incapable of paying the large sum of money fixed, either at the time of \textit{Nikah} or afterwards. It has been a general practice to leave the dower unpaid, and so like an on-demand obligation it remained due at all times the wife’s right to the same not being extinguished by lapse of time.\textsuperscript{54} Among poor Muslims, due to the weak financial position, high dowers could not be fixed and so they generally settled doers reasonably that suited the resources of the bridegroom. In regard to low dower Islam does not provides a measuring yard, and hence there is permission to accept even lower dower, but its minimum is never less than ten \textit{dhimnas}.\textsuperscript{55}

Divorce

The system of divorce was prevalent in Muslim Society, but was looked upon with extreme disapproval by wise and honourable persons. No doubt, divorce is lawful in Islam but disliked by God and allowed only under stringent conditions as a last resort. In case of differences between husband and wife, Islam strictly laid stress that every effort should be made by both the parties to smooth out differences and at reconciliation and the conjugal disputes must be settled by means of arbiters. The \textit{Quran} Says, “And if ye fear even a breach between them (husband and wife), then send ye a judge chosen from his family, and a judge chosen from her family, that peace be maintained,”\textsuperscript{56} but if

\begin{itemize}
\item[53.] Al-Nikah (Risala) Arabic MS. O.P.L Patna, P-213.
\item[54.] Hugh’s Dictionary of Islam p-91.
\item[55.] Ibid.
\item[56.] The Holy Quran, Chapter 5 Suran 4, Vesse 35.
\end{itemize}
differences becomes acute and should all attempts at reconciliation prove unsuccessful then the final separation is permitted by divorce.

Divorce is lawful in Islam because marriage is regarded as civil contract, rather than a sacrament of divine origin, and so the nuptial tie may be severed.

In connection with divorce it is worth mentioning that the wife was also entitled to demand a separation on the grounds of ill usage, than with holding of due and proper means of maintenance and certain other causes. In such cases an agreement entered into for the purpose of dissolving marriage was known as “Khula” as was prevalent during the wife had to give back her dower/Mahar or any other additional sum proposed by the husband. But this type of divorce was also subject to willingness of the husband to grant her a divorce.57

**Purdah System**

Women according to the Holy *Quran* should not ordinarily go out of their homes, and if forced to do so they should strictly absorb *Purdah*, and dress and conduct themselves in a way so as not to attract the male passers by.

In India among the Hindu the *Purdah* system existed long before the advent of the Muslim Seclusion of women could be traced back to all ancient communities and it was particularly so among the aristocracy during the palmy days to Hindu civilization.

In Mughal period *Purdah* was mainly observed by all classes of Muslims ladies with slight differences. Hamilton writes the Mohammedan women always go veiled when they appeared abroad.58 Ladies of the upper class society strictly observed *purdah* and none could see the toes of their feet. In fact *purdah* came to be considered as a measure of respectability among higher classes.

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But like Razia Sultan, Empress Nurjahan also broke the **purdah** convention, and showed her extraordinary personality in the public. On state occasions, she appeared in public and she always insisted on seeing with her own eyes the things and the people whose conditions and whose affairs she was called upon to regulated and rule. However care was taken to veil the face upon the lips.

When ever the respectable ladies of the higher section moved about they were carried in ‘*Dolis*’ with men in attendance. The women of middle class also strictly observed **purdah** and always appeared abroad in ‘*Chadar*’ and *Burquas* or long garments which covered their heads and bodies down to their ankles.\(^{59}\)

**Widows Position**

Muslim widows enjoyed a respectable position in society throughout Mughal period. Unlike Hindus, a Muslim widow was allowed to attend and enjoy the festivals of betrothal, *Nikah* and birth ceremonies, as Islam takes a more generous and liberal view about them and gives them permission to enjoy the fruits of life. The only ban on her, after the husband’s death, was to observe strictly the period of ‘*Iddat*’ which was of four months and ten days.

She had to be secluded in the house and was not permitted to move about except under unavoidable circumstances, that too during the day and covering herself with a veil.\(^{60}\)

In case of pregnancy, she had to follow the Islamic rules of Iddat up to the birth of the child.\(^{61}\)

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60. Behishti Zewar (Urdu) Vol, IV p-34.
61. The Holy Quran, Surah IXV 4, 11, 234.
It was an important feature of Muslim society that educated widows enjoyed an honorable position in the Mughal age. They imparted education to the inmates of the royal harem and the nobles families. The well-to-do class paid them respect and appointed them as tutors of the daughters and sisters. A widow in her family was treated with more respect than before by her children who believed that the paradise lay under a mother’s feet and always obeyed her and took care of her.

As a wife also woman had to follow the commands of the mother-in-law and win other member of husband family through dedicated service however, generally in course of time the woman acquired freedom to manage the household. Even the Muslim wives were expected to pull on properly with the mother-in-law failing to do so could lead to divorce. The women on family way were treated with great respect by relations as well as neighbours, however when they actually delivered the child they were not touched by anyone except the mid wife. In relation to her husband also the women enjoyed a subordinate position. The final work in most of the matters rested with the husband even though he often consulted his wife and gave due weightage to her counsel. No social function amongst the Hindus could be preformed without wife, which was described as the better half of man. In short even though the wives were accorded a subordinate position to husband they were treated with respect and importance.\(^\text{62}\)

The position of Hindu women who were treated at par with men and given position of pride considerably declined during the medieval period. One of the immediate impacts of the coming of Muslims in India was the introduction of pardah system. Pardah or veiling of women, was a common practice among the Muslims and was adopted by the Hindu women under the stress of circumstances the Hindus adopted \textit{pardah} as a protective measure to say the honour of their women folk and to maintain the purity of their social

\(^{62}\text{Abul fazal: “Akbarnama Vol III, Translated by Henry Beveridge, p.372( 1904).}\)
order. Probably the tendency to imitate the ruling class was also contributing factor for the adoption of pardan by the Hindus families.\textsuperscript{63}

It may be noted that the system of purdah was followed mainly by the members of high class families amongst the two communities. The women of high castes rarely went out. When ever they had to go out they went in covered palanquins. Even the middle class Muslim women observed purdah. On the other hand the Hindu women belonging to middle and lower classes did not observed purdah and moved out without restrictions. However, they use dopatta to cover their then head they went out the women of poor families who had to help their men folk in the fields and other pursuits also did not observe purdah.\textsuperscript{64}

The Hindus by and large practiced monogamy however a small section of Hindu population consisting of princes and wealthy persons married more than once the Hindus of middle class married second time only if there wife proved to be barren or died. This was also done with consent of the Brahmans. On the other the Muslims who were permitted by Quran to have four wives at a time also generally practiced monogamy. Only rich Muslims took to polygamy and maintained three or four wives a time.\textsuperscript{65} Widow re-marriage was prohibited in general. Altacker say that the prohibition of widow re-marriage began to be imposed from about 1000 A.D, even on the child widows; it was totally prohibited in Hindu society from about 1100 A.D. Initially society upper caste widows were prohibited from re-marriage where as lower caste widows were allowed to do so.\textsuperscript{66} Since the last century the lower castes, due to sanskritisation and the desire to increase their respectability begun to impose upon themselves the prohibition, of widow re-marriage.

\textsuperscript{64} Ibid., P.18
\textsuperscript{65} Ibid P.18
\textsuperscript{66} A.S. Altaker op. cit. P.156
The practice of tonsuring of widows was prevalent among may high castes until recently it is believed to have come into vague in about the 8th century A.D. this system of tonsuring of widows is believed to have been adopted by the Brahmmins under the influence of Buddhism where the Buddhist nuns under went tonsure in imitation of the monks. Henry Maine opines that superstitions belief, coupled with the Brahmanical dislikes of the enjoyment of property by women, had led to the practice of sati, and was intended to fight the ancient rule of civil law, which made her a tenant for life in respect of her husband property. It is also believed that the custom came into practice due to frequent wars and foreign invasions which left behind widows who preferred to commit “Sati” to leading a life of disgrace or dishonour. However though it started as a voluntary gestures, as time went on many cases were reported where widows were forcibly cast into flames of the pyre much against there will.67

“Sati” became more frequent among the royal families in northern India and quite common in Kashmir during the period 1500-1800 A.D. the practice of “Sati” or “Jauhar” was also quite common as well as popular particularly among the Rajputs and Marathas of central India.68 The incentive that were dangled before a ‘Sati’ were as Sankna and Angirasa say, that she who follows her husband in death, dwells to heaven for 3.5 corers of years69

Several Muslims emperors discouraged ‘Sati’ and adopted measures to prevent it as far as possible but didn’t succeed. This era led not only to the degeneration of women’s physical mortal and social life, but her right in educational, social, religions and economic fields were also lowered gradually.

67. Abbe J.A. Dubois, Hindu Manner Customs and Ceremonies (Translated by H. Beauchanp) O.U.P. (Illedn) 1906 P.357-8
68. A.S. Altaker op. cit P.130
69. P.V. Kane, History of Dharamashastra II Poona Bhandaskar Oriental Research Institute, 1955- p.587
The legal position of Hindu women with regard to inheritance right was also unsatisfactory under the doctrine of stridhan they were gradually excluded from succession to property and this led to their dependence on men.\textsuperscript{70}

\textbf{PRE-INDEPENDENCE}

When the Indians came in vital contact with the Britisher, in the latter half of the eighteen century the position of the Indian women had reached the maximum degree of deterioration. Ideologically women was considered a completely inferior species, inferior to the male, having no significance, no personality, socially she was kept in the state of Utter Subjection, denied any right suppressed and oppressed. She was further branded as basically lacking an ethical fiber.

The patriarchal joint family, the custom of polygamy and its concomitant Koolistan, the \textit{Purdah}, the property structure, early marriage, self immolation of widow or a state of permanent widowhood all these contributed to the smothering of the free development of women.

Thus not only social institutions and customs thwarted the free growth of her personality, but the prevailing ideology also assigned the Indian women on inferior status. She was denied independent personality. Her life as Manu says was to be associated with and subordinated to the father, the husband or the son. In fact she had not personality of her own she had no dreams of her own. She had no separate status as a member of the family or society. Her existence was taken for granted. Her opinion her desires, her likes or dislikes were never to be considered. In short the prevailing conception of woman, whether Hindu or Muslim, was basically feudal in character.

It was obvious as Britishers being totally ignorant of their plight in the early stage and further felt disinterested in interfering with the personal laws of

the Hindu they not only lacked interest in bringing reforms in the state of Hindu law but they otherwise were busy in other important matters. The position of woman in the words of Shastri appeared to be as follows.

“The enforced child-marriages, the exposure of the female children by throwing them at the junction of the Gangaes and the sea, the violence used to make women the Sati rule and thus end their miserable existence, the shameful treatment according to a widow the famous kulinism which make marriage a profession rather than a sacrament made woman not only an object of pity but many a woman sighed in the secret recess of her heart and wished that she had never been born a woman in the unfortunate country.  

Presenting the position of women in the pre British India, it has been observed that:

“Uneducated considered on a level with the shudras, marriage before their characters fully developed, transferred from the loving and sympathetic atmosphere of parents house to the house of the parents-in-law where an atmosphere of awe prevailed, apprehensive of suppression frequently forced to drag on a miserable existence in an interminable widowhood, their character suffered from forced repression in some direction and unnatural stimulation in others. They had no status in society none in their own estimation.”

According to Altaker

“Denied the benefits of education brought up in the authoritarian atmosphere, having no opportunities to develop their natural capacities, women became helpless illiterate narrow minded and peevish. Economically too women became dependent on men.

“The present woman is an atrophied limb of the social organism and especially in civilized society she depends as completely for her support and sustenance on the husband as a child does on its mother.\textsuperscript{73}

The movement of social reform begun during British rule through with a slow pace, when a few educated Indians coming in contact with western ideas started taking keen interest in ameliorating the conditions of Hindu women. Ishwar Chand Vidhya Sagar, Mahatama Gandhi, Raja Ram Mohan Roy, Tilak and other prominent figure laid emphasis on the education of the Hindu female abolition of child marriage, lifting of \textit{pardah} system removal of dowry evil and \textit{Sati Pratha}. The movement started with their effort and there was realization of feeling that the legislature should step in and to take some concrete steps by giving statutory recognition to their rights and provided some kind of identity and recognition to them in society. Though their efforts possessed a limited character nevertheless it created a kind of awareness that after all their position has to be improved. It was the beginning during the British rule but it took a concrete shape during the course of time in the post independent era when parliament passed notable legislations for improving upon the states of the Hindu women by passing many legislation in that regard.

Gandhi, 1869 emerged on the Indian political scene in 1948. He appreciated qualities of Indian women. “To call women the weaker sex is a liable it is man’s injustice to woman. If by strength is meant moral power then woman is immeasurably man’s superior. Has she not greater intuitions. Is she not more self-sacrificing has she greater powers of endurance, has she not greater courage? Without her man could not be if non violence is the law of our being, the future is with women.\textsuperscript{74}

\textsuperscript{73} Jawaharlal Nehru, quoted in pratima Asthana, \textit{Woman’s Movement in India}, p.9 (1974).
\textsuperscript{74} M.K. Gandhi, young India (Feb 9 1926)
Gandhi devoted his attention to women’s cause. He opposed child marriage and deplored the treatment meted out to Hindu widow. He wanted to give every widow the right to marry. He condoned the system of *pardah* and appealed to the parents to be broad minded. For him the system of dowry was a real drag on society. The reasons that are responsible for the deterioration of the status of women in India were

1. Patriarchal joint family system
2. Polygamy and the sati system
3. Enforcement widowhood, denial of the right to divorce and right to remarry after widowhood.
4. Child marriage and the *pardah* system.

Because of child marriage too much older men there was an increase in the number of widows. Both child marriage and the *pardah* custom led to low literacy rate among women. Their entry to social political and religious functions was prohibited. They were depressed to such an extent that they could not comprehend their own freedom and independent personality. During this period one finds exceptional women like Chand Bibi, Jhansi Laxmi bai, Kittur Rani Channamma and Rani Abbakka who made the remarkable impact in the field of administration.

The British were the first rulers who unified the country as a whole and were liberal in their thinking. They believed that rational thinking has to be the basis for all customs and institutions and all customs and institutions not so based on reason had to be done away with. Hence during the British rule Indian society faced significant modifications. The British Government worked slowly and succeeded in providing on alternative way of life for those who wanted change by introducing a new type of economy, state, structure, educational

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75. K.M. Gandhi, young India (Feb 4 1926)
76. K.M. Gandhi, Mahajan (May 23 1936)
system and also by passing new social legislations. Taking a broad view of the legislative changes effected in the area of Hindu law during the British period the first and foremost place may be accorded to that body of legislation which sought to improve the social and legal status of Hindu women. The prejudices of some of the Dharmashastra writers along with the degenerate customs which arose in the Hindu society in course of time under the impact of foreign domination were responsible for making the social position of Hindu women rather weak and inequitable. They came to occupy an inferior position in the eyes of law, this needed to be corrected and therefore, the legislature enacted a number of statutes designed to improve the lot of women in the Hindu society. The Hindu widow's Remarriage Act, passed in 1856 was the first important measure in this series. This act legalized the remarriage of the Hindu widow. It was an enabling Act and was passed at the instance of a reformist section of the Hindus. Thereafter the Hindu women's Right to property Act was enacted in 1937. The Act conferred on the Hindu women some limited property right than they had in past possessed. It was the beginning for an important piece of legislation which effected revolutionary changes in the domain of Hindu law of joint family, coparcenery, partition, inheritance etc. in course of time. The last statute in this series was the Hindu Married Women's Right to separate Residence and Maintenance Act enacted in 1946, which enabled a Hindu married women, without dissolving the marriage to claim separate residence and maintenance from her husband under certain circumstances mention in the Act.

A few statutes were enacted to suppress some objectionable social practices which have the sanction of law and customs amongst the Hindus. The first step in this respect was the abolition of the inhuman practice of sati by Lord William Bentick very early in the day. A very conspicuous evil, which was sapping the very vital of the society, was the practice of child marriage. To discourage this practice the child marriage restraint Act was enacted in 1929.
The attitude of non-interference adopted by the British administrators in case of the Hindu law was reflected much more tenaciously in case of Muslim law. On the whole changes made in the Hindu law were far greater than was the case in the domain of the Muslim law. Fewer changes have been effected in the Muslim law as administered in India than was the case with respect to Hindu law. In fact, some of the statutes were passed in order to restore the orthodox doctrine of Muslim law and undo the effect of judicial decisions. This can be ascribed to some extent to the lack of enlightened public opinion among the Muslim.

The first legislative change made in the law was in 1913 when the legislature enacted the Wakf Act. Therefore the Wakf Act 1913 sought to bring the law back to the Muslim shariat law and restored to the Muslims the right to make valid Wakfs in favour of the family. In 1937, the Shariat Act was passed which abrogated customs and brought all the communities under the Muslim law.

Another place of legislation was enacted in 1939. The dissolution of the Muslim Marriage Act gave to a Muslim wife the right of Judicial separation from her husband which had been denied to her earlier, perhaps because the courts follow mainly the Hanafi School of interpretation of the Muslim Law.

POST INDEPENDENCE

Though at the time of independence before the constitution of India, some reforms in the state of law were carried out by the Britishers at the instance of Indian social reformers like Raja Ram Mohan Roy. The concept of the women being independent rather like dumb animal who on humanitarian grounds, must not be mistreated was still holding ground. This is despite some great men and women who worked as equal and comrades and considered each other so, in the freedom movement itself. It is observed that.
Since independence all India women's conference became interested in constructive work and left its agitational attitude of pre-independence era. It activities since independence led to the enactment of some legislations concerning women. Some significant ones are, The Suppression of Immoral Traffic in Women and Children Act 1954, The Special Marriage Act 1954, and Guardianship Act 1956, Intestate Succession Act 1956, The Orphanage and Widow Home Act 1960 and the Dowry Prohibition Act 1961. Not withstanding the multiplication of legislation on various fields, with a view to improve the social political and economic condition and status of women even the ancient form of victimization child marriage, and premature consummation resulting in early and dangerous pregnancies. Sati, female infanticide, illegal abortions, dowry deaths, rape eve-teasing and various other forms of molestation of women still continues. In fact, since the passing of the dowry prohibition act and even after several amendments to the I.P.C, Cr. P.C, and the Evidence Act, dowry deaths are on the increase. The Hindu Marriage Act of 1955 and the Hindu Succession Act 1956, securing for women the right to divorce and property have not automatically given women rights. Under the Hindu succession Act, parents make will depriving daughters. Though, bigamy is an offence the rate of desertion by Hindu husbands and illegal second marriage is higher than "Talaq" rate of the Muslims.

The advancement of reproduction technology has brought in the new phenomenon of female feticide. One study revealed that nearly 100 percent of the aborted fetuses wore female. Women’s health is given consideration only in terms of maternity, leaving women beyond the reproductive age, young unmarried girls and widows outside health and nutrition schemes. The government’s family planning programmes have a heavy gender bias.\(^7^8\)

The condition of elderly women is also not satisfactory especially those of widows. She has to earn as also run the house and raise her children. If she

does not earn her condition is even worse. If the widow has no issue she has to work hard as a maid servant in her husband’s joint family or relations who might have taken her in and is totally dependent for all her needs on others. She has neither economy security nor a say in decisions concerning her and her children. Families still believe that once a daughter is given away in marriage she can not be given away again to another person. Hence widow remarriage though sanctioned by Hindu Widows Remarriage Act of 1850. Seldom takes place and is discouraged. Large sections of women have suffered a decline of economic status. Even after the promulgation of these laws the protection enjoyed by the large masses of women from exploitation and injustice is negligible. Though women don’t numerically constitute a minority, they are beginning to acquire the feature of a minority community by the recognized dimensions of inequality of class, economic situation status and political power. The chasm between the values of a new social order proclaimed by the constitution and the realities of contemporary Indian society as far as woman’s rights are concerned remains as great as at the time of independence.

79. Ibid., p. 16