

**CHAPTER - II**  
**HISTORICAL BACKGROUND**

**(A) INDIAN POSITION**

**(B) INTERNATIONAL DEVELOPMENT**

## CHAPTER - II

### HISTORICAL BACKGROUND

In contemporary society, criminal exploitation of women is intense, rampant and global in nature. At this juncture expansion of modern women's role as working class and alarming rise in the magnitude of crimes against them have further added to the complex problem.

Women's entry into the workforce is a harbinger of her family's prosperity, her own economic independence and above all nation's economic growth. But in the new role in adjusting to her world of work she is being overloaded with more responsibilities. The women, while making a concerted Endeavour to be a committed worker, adopting herself to the working environment and acquiring professional efficiency fails in role as an ideal wife and good mother as well. Ultimately she becomes a fiasco in all her dimension, and in between her different roles, she is sandwiched in the society. When she ventures to come out alone from traditional home boundary and embarks on her new working women position, she is greatly exposed to numerous crimes of the outer world like eve-teasing, molestation, rape, kidnapping, abduction and harassment

All her happiness in domestic sphere is again jeopardized when she fails to act out her role in the traditional domestic life. To say in other words, as she fails to perform her traditional domestic responsibilities properly, her sweet home turns sour and she is being deprived of the love and affection of her family members. The situation, thus, gradually aggravates in the family. She is being subjected to innumerable physical and mental tortures.

Position of women in the present society and in the increase in this magnitude of the variety of offences against them have a long history dating back to ancient times. The *Rig-Veda*, being the masterpiece of great scholars and the oldest developed authoritative written text of the world, provides ample evidence on the history of ancient Indian culture. It exhibits that in the *Vedic age*, the refulgent golden age of women, their social position and status was at the apex, and they enjoyed considerable freedom and privileges in the sphere of family, religion and public life, wife was then considered as the *Ardhangini* and the founding stone of the family arch. In the family,

she was usually expected to play the vital role of a sympathetic mother and beloved wife, but while she used to serve the family like a servant, she presided over it like a Queen. The position and status of women, as compared to the contemporary civilizations of Greece and Rome, was much higher. In the family, wife possessed high dignity and enjoyed peace, happiness and prosperity along with the other members. In the society, girls were entitled to undergo the *Upanayana* ceremony and studied *Vedic* literature and even *Vedas* contain many hymns which were revealed by the women seers who were then called a *Rishikas* and *Brahmavadinis*. The oldest *Rig-Veda* followed by *Sama*, *Yajur* and *Atharva* along with other Upanishads, portrayed women as the incarnation of the almighty mother power and respected *motherhood* with highest prestige. The *Shastras* picturised the better half to be instinctively imbued with qualities of head and heart and glorified her significant role in smoothening the daily life of her male consort and portrayed her noble qualities to be:

*Bhojyeshu Mata, Karyeshu Mantree;  
Bachneshu Dasee, Shayaneshu Rambha(1)  
Dharmanukula Kshamaya Dharatree,  
Bharyachakhad Gunavteeah Durlabha(III)<sup>1</sup>*

Thus *Shashtras* attributed the noble and ideal wife with characteristics of affectionate mother in serving and feeding the family, A reliable and trusted adviser to her male counterpart in deciding her family problems, a devoted and humble servant in serving the family, a sexually pleasing partner like *Apsara*, *Rambha*, and religious, dutiful obedient, tolerating woman with quality of pardoning others like the mother Earth. While incorporating these qualities of women as wife, *Shastras* also enumerated her rights in the family and placed her in a very prestigious position. In fact, woman being the attraction and inspiration of her male counterpart, is also depicted as the living ideal of affection, pleasure, confidence, devotion and faith and described her as women, you are mere faith in the silver mountain foot of confidence. May you flow like a nectar stream smoothening the beautiful plain of life<sup>2</sup>. The much debatable concept of equality which is germane to *Vedas* and nowhere better exhibited then in the Hindu God's *Lord, Rudra* provided equal status to his better half in his own body and termed himself as *ardhanariswar*.

<sup>1</sup> Gupta, G.L. Edited- "Challenges to the fair Sex" Delhi 1988

<sup>2</sup> Ibid.SL.1

In the later literature of *Samhitas*, *Brahmans* and *Sutras*, there was gradual hardening of the caste system and position of *Vaisya*, *Shudra* and women deteriorated. The *Vedic* word *Dampati* which denoted joint ownership of wife and husband in family property was wrongly interpreted during *Smriti* period and the property right of woman was withdrawn. The later *Vedic Shastras* projected the view that a vicious husband must be worshipped, but a bad wife may at any time be replaced by another wife and for committing minor faults beating punishment was prescribed for woman. Neither by sale nor by repudiation, a wife by no means was held capable to be released from the clutches of an ungrateful husband.

Introduction of child marriage in this age resulted in denial of educational rights to woman. During *Vedic* and *Upanishadic* Age, women who composed hymns of *Vedic* and imparted knowledge to others, became blind followers of the preaching of *Smriti*, *Sutra* and *Brahmana* and led a miserable life. They spent a slavish life in their in-laws' houses and turned into a child bearing machine. Early marriage affected their health, but still under the *Purdah* system they remained within the four corners of their husband's houses and being aloof from all the worldly developments, led the life of a helpless creature.

In the prevailing unfavorable atmosphere of this era, many crimes like *Sati*, *Devadasi*, child marriage dowry and female infanticide evolved and women were victimized in all vistas of the society. During this period, to escape from the responsibility of maintaining the widow after death of her husband and to misappropriate her share of property under religious cover, she was instigated to commit suicide on the funeral pyre of her husband as *Sati*. This evil system of sati was again glorified and got a boost to keep up the interest of male dominated society. The noble religious *Devdasi* system in rolling of times changed as a corrupted system and *Devadasis* turned as temple prostitutes. Still the society kept this system in continuance and designated them as fifth class above the untouchables for fulfillment of the immoral desires of influential people of the society. Thus *Devadasis*, being the women torturing institution, is kept alive in temples of worship, in complete contradictions of Hindu Philosophy which speaks "*Yatrastu Pujyate Nari, Ramyante Tatra Debata.*"

The 10<sup>th</sup> century jurist *Mrdhatidhi* visualizing the existing customs of society, stated that slavery was then recognized as an institution and both male and female

slaves were transferred with the transfer of land. Profession of prostitution was recognized and regularized. Males of higher cast, if they were poor, seemed to have adopted the having of living on the dowry of the bride. The status of women, thus further deteriorated and their position in the society became one of the utter degradation. The entire class of women then became the victims of monstrous humiliation and in the words of *Ashok Rudra*, human have known hardship in all civilization but surely nowhere else the inequality in the treatment of women could have surpassed that in India.<sup>3</sup>

In the course of times, dowry began to be considered as the essential ingredient of Hindu marriage and turned as bride price in the marriage market. The members of high family regarded payment of dowry as status symbol. The dowry amount in the society increased according to the status of the bride-groom and the innocent girls started to be traded like cattle.

The newly originated evil of the dowry custom exhibited the most disastrous effect and the birth of a female child received a very poor and hostile reception in the family. Even to escape from future problems, people in the society started the practice of killing female child either from mother's womb or just after the birth.

While the situation was thus gathering clouds, the freedom movement in India proved as a blessing for the women community and provided scope for their unification. Since then the foundation was laid down to fight discrimination against women. The history of women progress and the trend of marching towards emancipation whether in Africa, America, Asia or in Europe, the prejudices that hamper the path of progress and the hurdles that women encounter seems almost identical as in India. The similarity makes the struggle not national but global human issues, lending kinship to our ideal methods and achievements.

At the international platform Clarazetkin's effort for unification of women class was praiseworthy. On her proposal, the international women's day was observed on March 08 every year for the unity of the working class women in the world and their struggle to achieve democracy, place and socialism. The second International Conference on women was held at Copenhagen in 1910, and women's day was

---

<sup>3</sup> Women's Struggle for equality and emancipation, "*Women's Development*," Edited by Chetana Kal Bagh, Delhi, (1991) 64.

observed in Germany, Austria, Denmark, and Switzerland in 1911 and in Russia in 1913.

During 1918 the great leader Lenin reflected in his speech the existing universal condition of women class and said, No wonder women are called domestic slaves; such is the status of women in all civilized countries, even the most advanced women do not enjoy full equality in any capitalist state, not even in the freest of republics.<sup>4</sup>

In India, Father of our nation *Gandhiji*, being a foresighted saint like man, associated himself with women and sought their active co-operation in his non-violence movement. The progressive women leaders then organized the historic women conference at *Adyar*, Madras in 1926 wherein representatives of 25 nations participated. During 1930-31, three prominent women were invited to the round table Conference in London. Indian delegate Smt. Reddy represented the International Women Conference at Chicago in 1934. Thus the demands for equal right and status for the entire women folk had by then acquired an international dimension.<sup>5</sup>

### **Position and Status of Women in Different Ages**

In the Vedic period women on whole occupied a position of honour, respect and equality with men *Rig-Veda*, the meditative mastermind product, is excellent, projection of the highest religious truth of thoughts, which dawned on the saints and seers as a result of their contemplation in a life of complete asceticism and penance, shows evidence pointing to the fact that women were fully the equals of men as regards access to and capacity for the highest knowledge of *Brahma*. The *Veda* contains hymns which were revealed even by the women seers, who were called *Rishikas*, and *Brahmavadinis*.

The position and status of Indian women in the Vedic age was much higher than in any other ancient society like that of *Greece* and *Rome*.<sup>6</sup> The general position of a wife was of high dignity and she enjoyed peace, happiness and prosperity in family along with the members. In *Vedic* age the wife in a family enjoyed full religious rights with her husband and regularly participated in religious ceremonies

---

<sup>4</sup> "Lenin" - "On the Emancipation of Women," Soviet, 5<sup>th</sup> print, (1977), 62

<sup>5</sup> "Ibid" - "Women's Struggle for Equity and Emancipation" 67.

<sup>6</sup> *Ibid* - Majumdar Ramesh Chandra, "Ideal and position of India Women in domestic life" Great Women of India, Calcutta, 18 Hem Naskar Road, Calcutta 10, 1082.

with him. In the absence of wife, such performance of religious ceremonies were considered invalid and she was given the position of full partner in life, and this system also continued in *Upanishadic Age*.

The status of women in family being the same as that of man, many women proved themselves as famous scholars and authors, and took part in the industrial life of early times. They were manufacturing arrows and bows, making baskets, weaving cloth, and participating in outdoor Agricultural work. Since women were following many outdoor professions, there was actually no *Purdah* system in early society. But women as *Kings* and Political authority do not figure in the early *Vedic* society. In view of frequent wars, there was patriarchal society with male domination. In this period, position of women was on the whole satisfactory. During this period *Aryans* were engaged in the arduous task of political expansion and women in this age in India and in *Homeric Greece* were actively cooperating with them.

In the *Epics* and *Puranas* though no woman figured as ruling queen but women like *Gandhari*, *Draupadi*, *Kaushalya*, *Kaikeyi* and *Kunti* were in very high positions and exercised considerable influences in the family councils of *Kings*. In this age there are instances of marriage of *Aryans* with *Non-Aryans*. Heroes like *Bhima* and *Arjuna* were married to *Non-Aryan* girls *Hidimba* and *Uchi* as narrated in *Mahabharat* text like the custom of *Upanayana* of girls was prevailing in the early *Vedic* era. There were worship of Mother Goddess in *Vedic* literature. Among them, the mother of Gods (*Devamata*), *Prithvi*, *Saraswasti*, *Shri Lakshmi Devi*, *Ratri*, *Ambika*, *Uma*, *Durga* were famous Goddesses of warship. So *Shakti puja* was evidently prevailing in society since the early age.

In later time also the ideal and the traditions of *Rig-Vedas* were followed like law. *Upanishads* exhibit the continuance of these traditions in *Upanishads* age. Hence it is true that besides the religion injunctions of *Smritis*, *Purana*, etc. above discussed other factors are also responsible for the deterioration in the status and position of women in society.

## **Women Education and Privileges**

The privilege of *Vedic* study and participation in *Vedic* ceremony was equally open for women since the *Vedic* age. Many women flourished in society as great scholars and education of women was also encouraged. Some of the prominent

women *Rishis* or seers composed hymns in *Riksamhita* and twenty of such hymn composing ladies are named in the *Sarvanu Kramanika*. From the panorama of great women even some revealed *Rigvedic* hymns. Among them, names of *Lopamudra*, *Apala*, *Vishwavara*, *Sikata*, *Nivavari*, *Juhu*, *Yami*, *Indrani*, *Savitri*, *Kadru*, *Ghasa*, etc. were famous and their names have been preserved in later literatures of India. Women *Rishikas* and *Brahmavadinis* were products of educational discipline of *Brahmacharya*, for which women in ancient society were eligible. The *Rigveda* refers to young maidens completing their education as *Brahamacharinis* and then gaining husbands in whom they merged like rivers in oceans. It also states that unmarried learned and young daughters should be married only to learned bride-grooms<sup>7</sup> *Yajurveda* similarly states that a daughter who has completed her *Brahmacharya* should be married to one who is learned like her<sup>8</sup>.

The grounds for such high literacy attainments of women in ancient society were prepared by education from childhood. The girls like boys underwent the *Upanayana* ceremony at the age of eight and began the *Vedic* studies. The spirit of ancient Indian culture does not deny individual women the opportunity for spiritual development or intellectual eminence. In this age those who were inclined towards saintliness or scholarship became *Sanvasinis* in spirit, though not always in form. The maintenance of chastity was obligatory on the *Brahmacharini*. The ancient universities were residential, and a more perfect tutorial system was followed than as is possible in any modern university. The pupils were being kept under the observation of the *Guru* throughout the day. After the completion of the whole course, the system of *Samavartama* ceremony was usually celebrated and students attending the ceremony were called as *Snatakas* including boys and girls.

## (A) INDIAN POSITION

### (1) Position of Women During Vedic Period

The women in the Vedic period, it is observed, enjoyed equal status with men and independence in action

उपोय मे परा मृश मा पे दधाणि मन्यथाः ।  
सर्वाह मस्मि रोमशा गन्धारीणा मिवाविका ॥

<sup>7</sup> *Rig Veda*—V.7.9 & III(55.16).

<sup>8</sup> *Yajurveda*-(VIII.1)

(Let the queen ask the king that she is in no way inferior to him. As you impart justice among men so I do among women. In previous days wives of kings administered justice to the wives of their subject. I shall also like them.)<sup>9</sup>

*Svayamvar* was in vogue and the Aryan girls were free to choose their husband of their likings.

ब्रह्मणस्पते यन्ता सूक्तस्य बोधि तनय व जिन्वा ।  
विश्वं तद्वदं यदवन्ति देवा बृहद्वदेम विदर्थे सुवीराः ॥

(For men it is incumbent to understand the real meanings of *Vedvākya* by proper means and marry a woman in the prime of his life and produces and protect children and keep them unattached towards worldly affairs impart proper education and make them learned enhancing happiness.)<sup>10</sup>

The parents influence was not unfairly exercised against the wishes of their wards in choosing their life partner. Women were not only highly educated and cultured, they proved to be good teachers in the upbringing of their children in all spheres of life<sup>11</sup>. They even imparted military training to their children in case of need. The overall image of the Hindu women in the Vedic society was quite commendable. The Hindu women then lived with full sense of dignity and security. The family life was also conducted according to Vedic Dharma and its injunctions. There was no feelings of assigning the women folk a secondary role in premarital and post marital life. The following observations will further elaborate and illustrate the said point of view. The study of Vedic India is essential because it reflects the position of Hindu women in the society.

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 had crossed over India and settled therein. The *Aryans* were the authors of the Vedic literature and were the first among many races inhabiting India. They accepted the authority of *Vedas* and followed the *Vedic* rules. These rules consisted of moral,

<sup>9</sup> *Rig Veda* M-1, *Sukti*-126, Sl.-6

<sup>10</sup> *Rig Veda* M-2, S.24, Sl.-16.

<sup>11</sup> *Rig Veda* M. – 1[S. – 124, Sl.4; S.122, Sl. 14; S. 116, Sl. 13] ; See also *Rig Veda* M.1[S.123, Sl.2, S.118 Sl. 1; S. 120, Sl. 5; 3, 114, Sl.1]



ethical and religious injunctions. To the *Aryans* whatever was contained in the *Vedic* texts was *Dharma* and the *Dharma* in the simplest sense meant law to them<sup>12</sup>.

The *Smritis*, Commentaries and the digests was the developed literary works in the *Vedas* and was basically founded on them<sup>13</sup>. The first Indian literature<sup>14</sup> (in its evolutionary state) was said to be reflected in the *Vedas*. The Vedic society was governed by “*Varna Dharma*” and “*Varna Ashrama*” and a Hindu was born in the then society, for fulfilling the four great missions of his life viz. the *Dharma*, *Artha*, *Kama* and *Moksha*.

The *Rig Veda* the first among the four *Vedas* was said to have been compiled by the great *Aryan Rishis*, *Bhardwaja*, *Atriye*, *Vandev*, *Vasistha*, and *Kanva* etc. The learned Brahmins, while compiling the *Vedas* took notice of the then existing traditions of the people of the *Pre-Vedic age*<sup>15</sup>.

The *Rig Veda* referred to only two classes of people who then constituted the *Vedic* society<sup>16</sup>. They were the *Aryans* and the *Dasas*. The *Aryans* possessed white complexion and the *Dasas* were ordinarily black skinned. It is observed that the *Aryans* were religious minded people and worshipped the Supreme being, by performing different *Yajnas* (sacrifices)<sup>17</sup>. Whereas, the *Dasas* were not religious minded people and did not submit to the authority of the *Vedas* for a long time. It is observed the *Dasas* were merged into the *Sudra* community at a later stage of social progress.<sup>18</sup> They served the twice born *Aryans* for attaining their *Mukti*. The *Vedic* texts assigned each “*Varna*”, their academic or professional duties.<sup>19</sup> The *Dasas* or the

---

<sup>12</sup> Law, then was considered to be a branch of “*Dharma*”

<sup>13</sup> Manu, Yajvalkyia, Narada, Parasara Smritis etc: Mitakshara, a running commentary on Yajvalkyia Smriti : Daybhaga, a digest; containing the views of various Smriti writers.

<sup>14</sup> Writing came into vogue in India at about third century A.D. (Dr. H.S. Gaur, Hindu Code, P-31)

<sup>15</sup> Muller Prof. Max computed its age to be above 1200 B.C. See Max Muller’s A.S. Lit., P. 49.

<sup>16</sup> Gaur H.S. – Hindu Code P. 25. The Earlier *Vedas* contain no reference to any caste. They only refer to the *Aryas* and the *Dasyas* the former being the *Aryan* immigrants and the latter the aboriginal natives of the country like *Dasya*, *Sirvyas* See Dutt’s R.C. History of Civilization in Ancient India, P. 212

<sup>17</sup> “*Vedic* Hinduism laid great stress on the performance for *Yajnas*... The *Vedic* Hindu was not concerned with meditation and reflection”. Dr. Paras Diwan-Mod. Hindu Law, ( 8<sup>th</sup> Ed.) 1990, P. 15.

<sup>18</sup> Manu traces the origin to the animus mundi (the Supreme soul) *Brahma*, who “produced by a thought a Golden age, in which he himself was born as *Brahma*, who for the sake of the prosperity of the world, caused the *Brahmins*, the *Kshatriya* the *Vaishya* and the *Sudra* to proceed from his mouth, his arms, his thighs and his feet allotted to these their distinctive duties”. Dr. H.S. Gaur – Hindu Code, P-27. See also *Rig Veda* X, 90, 12; “*Brahmans*” *Syamuktam* avaid bahu Rajanyah pad Bhyam *Sudra* *Ajayata*”, See also “The four *Varnas*” R.C. Dutt’s Vol. I, Chap. VIII P. 284 to 325

<sup>19</sup> The Hindu society was divided into two main castes – 1. The *Dwiza* or twice born and 2. The *Shudras* or the servile people.

*Sudras* were categorized in the class of servants or slaves and were asked to serve the regenerate class of *Aryans*. The *Aryans* were less in number and therefore, with a view to enlarge their number, they permitted many Non-Aryan tribes aboriginal races (already residing in India) to join the Aryan culture<sup>20</sup>. Many Non-Aryan tribes or races, who espoused the *Manu* cult were merged into the Aryan race, increasing thereby, the then existing population and further the area of Aryan influence. Many, who were not initially Aryans, became *Brahmins*, *Kshatriyas*, *Vaishyas* and *Sudras* by their professional conduct, etiquette and deeds were accepted within the Aryan community, thereby increasing the Aryan population in India which at that time was known as *Aryavarta*, the place of Aryan. The *Vedic Aryans*, it is found, led a highly cultured and civilized life, and were well versed in various Arts and crafts. They were prosperous kind of people, leading a holy life and following Vedic injunctions.

Among the great *Aryans*, the *Brahmin* was the true repository of all the known or revealed knowledge and for that reason alone, he was highly respected in the then society. He held semi-divine authority in that society. As the *Vedic* culture flourished, progressed and developed, the *Vedic* religion grabbed many non-Aryans into her fold, resulting in the growth and development of Aryan race beyond the Indus valley. The *Aryans* then spread over many parts of India and settled therein for permanent living. The territory which they had occupied began to be called *Aryavarta* i.e. the place where the *Aryans* dwelt upon. The Orthodox Law<sup>21</sup> applied upon all *Aryans* of the *Aryavarta* and possessed a *lex loci* character. And then a stage came in the evolution of human society in India, that Aryans lost their "Aryan" name and began to be known as "Hindus" viz. the persons, who inhabited the *Hindusthan* i.e. place beyond *Indus valley*.

The Vedic India may be studied as follows:

### **(i) The Vedic literature**

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 a Hindu, consciously or unconsciously and it is reflected in him in

---

<sup>20</sup>. "Some aspect of ancient Indian Culture" by Bhandarkar P.6 at.9 of his book, the learned author observes that, "...Many members of Non-Aryan tribes or races espoused the Manu cult and were merged into the Aryan race".

<sup>21</sup> Siromani-comm of Hindu Law, P.32 "Before the introduction of the Mohammedan religion in India, the hindu law was the law of the land".

various forms and practices.<sup>22</sup> For a Hindu the authority of *Sis* 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 up till now. The four Vedas are neither mutable nor corrigible.

Because of great authority of *Vedas* as a sacred Hindu text, it is claimed to be the first source of orthodox Hindu Law even today and all the *Smritis* 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 a judicially acknowledged view that he who believes in the authority of Vedas and in the philosophy of Hindu way of life is a Hindu.<sup>23</sup>

## **(ii) Believes**

It is observed that the essential part of the *Vedic* system of beliefs consists in an assemblage of myths, in relation to which all the rest, even the Cosmogony and above all the eschatology, are of secondary importance. These myths can be divided into three groups corresponding to three social categories:-

- (i) Myths of sovereignty
- (ii) Myths of war, and
- (iii) Myths of Reproduction.

The background of the *Vedic mythology* is naturalistic. However, the natural fact is rarely presented in its pure state, but appears to have resulted from an assimilation; the battles of a God, for example, having been identified with the manifestations of the storm. At least in the *Rig-Veda* it is noticed a tendency to transfer the scenery and story of myths to the sky. The figures which occur in the myths are strongly anthropomorphized, but not to a uniform extent; they are often also presented as animals, but not to such an extent as to affect their behaviour, which remains human.

*Vedic* thought moves on several different planes, each fact being susceptible of more than one interpretation. The language has had a certain effect, and a symbolism has been created which tends to mask the older meanings. As a result of a sort of leveling down, the divine figures, which at first were individualized, have taken on a

---

<sup>22</sup>. Sarkar's U.C. (Dr.) "An introduction to Hindu Law." P.1

<sup>23</sup>. *Yagnapurushadas ji v Mhdas and others*, AIR 1966 SC 1119.

certain uniformity. The number of the Gods cannot be stated since there is no clear distinction between the divine and the non-divine, and since everything, down to the implements of the cult and abstract ideas, can be divinized at a given movement and from a given point of view. It is in this fluid form, and not as a stable system of thought, that one can speak of a *Vedic* pantheism the universe is not divine, but the divine is the universe, the universe is a function of the divine, which is at the same time within things and external to them.<sup>24</sup>

At that time when he is invoked, each divinity is regarded as the Supreme divinity: he is given the highest prerogatives, and even attributes which belong properly to others. It is through this shifting that the process of leveling takes place; it is to be explained in part by the Indian technique of hymnology (in a repertory of hymens one draws from a set of interchangeable formulae) and in part by an undeniable tendency towards monotheism. This is the phenomenon which Max Muller called henotheism or Cathenotheism. It can preserve the word without giving it his meaning of a deliberately developed system.

Another remarkable feature of *Vedism* is that it does not involve a hierarchy, an organized pantheon. Certainly some Gods are invoked more often or in a more urgent manner, but this does not necessarily correspond to the importance of the divine figure in question. Side by side with the Gods there is also a vast, indeed unlimited domain of "Special Gods": some of these are emanations from a more diversified personality, whose attributes have been split apart, a frequent occurrence in later *Vedism*. These divisions as also the fusion of images may reflect divergences between tribes and families.

The *Vedic* religion is seen in the process of evolution. In the hymns themselves the *Aditya* form a sort of background, a residue of *Pre-Vedic* ideas. After the stage of hymns the representation of the God becomes less distinct, act takes the place of myth, and eventually doctrine takes the place of act. As one views the texts in sequence, it is doubtless to over emphasis this transformation, separating what may have been simultaneous and veiling ancient forms behind irrelevant interpretations.

---

<sup>24</sup> Louis Renou- Classical India Volume-III *Vedic India* (Translated from the French by - Philip spratt). Published in 1957, at 54-55.

### (iii) The Divinities

It is observed that the Gods of the *Veda* are active and passionate beings who intervene in human affairs. Though their attitude is initially doubtful, homage renders them propitious even if they are to be feared, they become the friends of men through prayers. They are also friends among themselves, or at least united against the demons, however, in later mythology, discord reigns among them also. The attitude of men to them is not that of a slave. A man adores them and flatters them, but he knows that he has a hold on them. This power is that of the word, the characterizing word or praise (*Shansa*), which puts the god under an obligation in the measure that it refers to him.

## (2) Position of Women in Vedic Society

History has put the emphasis on outstanding women and not women as a whole. Moreover there is a marked gap between the micro setting i.e. the single woman who is the object of direct observation and the micro setting of society. Florence has in her book "Women and the Power to change" States that true business of civilization has been in the hands of men. On the other hand, the extent to which civilization has been built by women is unacknowledged and unpaid.<sup>25</sup>

The attitude of a community towards women has great social significance because the position of women in the society is the true index of its social, economic, political, cultural and spiritual attainments. While tracing the history of women through the ages one finds that the role and status of women has been labeled as ranging from a position of authority and freedom to that of subservience.

It is observed that women had neither property nor the right of inheritance, and their status was on a level with that of the *Shudra*, which suggest that their social position was very low. But other evidence tends to show the opposite. The wife as a companion in conjugal life in *Vedic* society was not an unusual feature. There were women among the *Rishis*, and, in the *Upanishads*, among the theologians. The wife of the sacrificer had a part, though a passive one, in the ritual and in some agricultural ceremonies the woman offered sacrifice even if she was not married. The nuptial rites emphasized the high value attached to the wife at the religious level: "the friend half of the man". But from *Rig Vedic* times onwards pity or contempt was expressed for

---

<sup>25</sup>. Das Amrita (Dr.), *History of Women in India*.

the “girl without a brother” and the birth of a daughter was deplored. Finally, from the certain references in the hymns it has been inferred that prostitution was fairly common (Paschal)<sup>26</sup>

In social terms, early *Vedic* society was in many respects almost egalitarian. Thus, while differences based on rank and wealth existed, especially in terms of access to cattle chariots and horses, while there were differences in status on the basis of age and sex, restrictions on the access to productive resources were virtually non-existent as far as men were concerned.<sup>27</sup>

The basic social unit was probably the patriarchal family. This appears to have been fairly large probably spanning three or four generations and may have included the parents of both the bride and the groom, and was probably the basic unit of production and consumption. Kingship terminology was rather simple, distinct terms, existing only for the father, mother brother, sister, son and daughter, a common term *naptr* being used for nephews, grandsons and cousins. Further, a common term was used for the father’s father and the mother’s father.

The fourfold *Varna* system on the other hand, was virtually absent. There are only fourteen references to *Brahman*’s, nine to *Kshatriyas*, and one to the *Sudra*, the last named being referred to only in the context of the *Purushasukta* hymn which occurs in the tenth *Mandala* of the *Rig Veda* which is commonly regarded as late.

The status of women in early *Vedic* society is a matter of some debate. While there has been a consistent tendency to idealize their position, it is likely that reality may have been more complex. That women played a certain part in the productive process is evident from the term *duhitr* as noted earlier as well as from their involvement in activities such as weaving. Further we have references to women seers of *Vedic* hymns, which would indicate some access to ritual and spiritual traditions. Besides, certain practices such as child marriage seem to have been unknown in early *Vedic* society. However, society appeared to have been organized patrilineally, and while there were prayers for the birth of sons in particular and for *Praja* or offspring in general, there was none for the birth of a daughter. Further, most of the major

---

<sup>26</sup> Louis Renou – “*Vedic India*”, P. 131

<sup>27</sup> Roy Kumkum, “*The Vedic Age(3) : Societal Change*”, published in *Employment News weekly*, New Delhi, Saturday 25.3.89, P.1

deities in the early *Vedic* pantheon are male.<sup>28</sup> Which would possibly indicate male domination on the human plane as well. Moreover, while early *Vedic* society was by and large relatively undifferentiated, there are no indications to suggest that women could occupy the highest positions of authority and prestige those of priests or the *Raja*. Thus, a certain degree of social stratification along gender lines is clearly discernible.

However, in the *Rig Vedic* period (1500-1000 B.C.) women enjoyed a high position in society surpassing the contemporary civilization of Ancient Greece and Rome. There were hardly any prescribed positions exclusively earmarked for man and there are references in *Vedic* literature of a ritual for ensuring the birth of a scholarly daughter. Many women made a mark as renowned scholars and philosophers like *Visvavara*, *Ghosala* and *Apala*. *Saunaka* in *Brahmadevta* mentions 27 *Brahmavadinis* great scholars – who contributed *Suktas* in the *Rig-Veda*. Women were married at a mature age, participated in religious ceremonies and had freedom in the choice of husband's polygamy was rare.<sup>29</sup>

### **(3) Position of Women in Post Vedic Period**

However, this was short-lived and the position of women declined steadily from the later *Vedic* period onwards. The injunctions of Manu merged the wife's individuality with that of her husband and recommended strict seclusion for women and rigorous discipline for widows. While glorifying motherhood and allowing women all freedom in the management of the household, he permitted child marriage and polygamy. In the *Dharma-Shastras* women are unambiguously equated with the *Sudras*. Even the *Gita* places women, *Vaisyas* and *Sudras* in the same category and describes them as being of sinful birth.

Thus a dichotomy is evident throughout ancient Indian history. The two major heterodox religions, Buddhism and Jainism supported greater freedom for women. *Sanghamitra*, the daughter of king *Ashoka* established a nunnery in Sri Lanka

---

<sup>28</sup>. Roy Kumkum, "The Vedic Age(3) : Societal change", published in *Employment News weekly*, New Delhi, Saturday 25.3.89, P.1

<sup>29</sup>. Das Amrita (Dr.), "History of Women in India", P.1. A paper read by her in a seminar held in I.T. College, Lucknow on "Position of Women" in the year 1988.

and is remembered even today for her message of universal love. In south India, women enjoyed a higher status because of the prevalence of the matriarchal system<sup>30</sup>.

### **Marriage and Vedic Rituals**

Leaving aside its juridical and social aspects, the ritual of marriage, *Vivaha* of which some parts were to be found in the *Shrauta* texts,<sup>31</sup> could be summed up as follows:

First of all the date of ceremony (constellation etc.) was carefully decided. The requisite qualifications (caste, bodily signs, structure of the name, etc.) in the man and more especially in the woman, were then ascertained. The ceremonies began with the dispatch of messengers to the father of the girl, they presented themselves and set forth the claims of the family. The agreement is sealed with a solemn formula and a contract. The young man was then taken to the house of his future parents-in-law by girls. He was received as an honored guest with rites of *Arghya* and *Madhuparka*. He anointed the girl with oil gave her a new cloth a porcupine quill and mirror; she was then solemnly handed to him by her father. The following oblation: the brother or mother poured out parched grains from the hollow of the joined hands. The girl stood on a stone walked round the fire, and took the "seven steps" (which seals the union as irrevocable), led by her finance, who took her hand (*Panigrahana*, a term which has become equivalent to "marriage"), touched her shoulders, her heart and her navel and sprinkled water on her. The clothes of couple were tied together, or alternatively their hands. Then gifts were made to the teacher, and there followed the *Simantonnyayana*, which was the occasion for the bride to weep. A procession (*Prayana*) was then formed, which took the bride to her new home, in a carriage or on a horse or elephant. The domestic fire was also taken with her, and on the way propitiatory ceremonies were performed. She entered the house without touching the threshold, and was seated on the skin of a red bull. On her lap was placed a child born of a woman who has given birth only to boys, all of whom were living. The couple then ate some food which had been offered to the God the husband first tastes it and then give it to his wife; or alternatively they anointed each other, and touched each other's heart with

---

<sup>30</sup>. Das Amrita (Dr.), "*History of Women in India*", P. 2. A paper read by her in a Seminar held in I.T. College, Lucknow on "*Position of Women*" in the year 1988.

<sup>31</sup>. Louis Renou – *Classical India V.-III Vedic India* (Translated from the French by Philip Spratt) published in 1957, P. 116

food which was offered. In the evening mantras were recited concerning the pole star and the star *Arundhati*, which the husband pointed out to his wife.

After the ceremony chastity was observed for three days: a staff was placed on the bed between the spouses. On the fourth day oblations were offered in order to drive away evil influences from the bride, and the remains of the offerings were mixed and used to anoint her all over the body, even to the fingernails and the hair. Most of the formulae pronounced during the ceremony were taken from the great hymn of the Marriage of *Surya*. On the fifth day, at least according to *Baudhayana* an offering of the *Bali* type was made to an *Udumbara* tree, to the branches of which gifts were attached. Certain forms of marriage are celebrated with special rites.

Many of these practices were found among other Indo-European people. Masked by a magical symbolism, they showed a contractual form of marriage, in which there also survived traces of marriage by capture.

It may be observed that dancing was referred to in several rites, even funeral rites, and from as far back as the hymns. The musical instruments then were the drums, used especially for war and known in various forms, among which was the "earth drum": the *Citara (Vina)* also in various forms; the flute, the conch-shell, etc. singing was certainly much practiced, apart even from the prominent place accorded to it in the public ceremonial. Hunting's with bow, noose and trap was greatly liked: it is possible that tame elephants were already used to capture wild ones. There were war chariots with places for two, and carts, some with solid wheels and harness included a pole and yoke.

The social organization rested on the family, which was of the patriarchal type. Polygamy was practiced, at least in the princely families. There was no polyandry, nor (except in one doubtful case) infant marriage. The prohibitions on marriage, in addition to the Ban on incest alluded to in the *Yama-Yami* hymn, were, in the *Brahmanas*, marriages within the *Gotra* ("we marry" says the *Satapathabrahmana*, "in the 4<sup>th</sup> or 3<sup>rd</sup> generation") and in the domestic sutras, the marriage of agnates and cognates. It was not clear, in the remarriage of widows allowed, except in the case of the levirate; as to the burning of widows. It is observed that marriage by purchase was then known though it is not certain whether it was the normal form, and the price, *Shulka*, paid to the father was usually a hundred cows and

a carriage.<sup>32</sup> The burning of widows was not prescribed in the liturgy though it must have been known in Vedic times was not in the form of sacrifice in the direct sense.

In addition to their part in myth, the water constituted a cosmic principle *Kumaraswamy* spoke of cosmology based on the water the habitation of the ambrosia the source of universal life, the ‘mother of mothers’ they were divinized under their proper name of *apah*, representing in general the rivers (there is no religious representation of the ocean). The chief name of these divine rivers was *Sarasvati*, whose praises surpass the limits to be expected in the case of natural object. *Sarasvati* was a quite imposing figure, associated with the great gods, and identified in the *Brahmanas* with the word (*Vach*), which as far back as the *Yajurveda* was given as her instrument.

Although several male gods (*Dyaus*, *Surya*) tend to assume female aspects, the female divinities played a relatively minor part. In addition to *Ushas* and *Aditi*, there were *Vach*, the ‘word’ (expressing the sacred praises) *shri*, ‘beauty’ (from the *Satapathabrahmana* onwards), *Puranidhi* ‘Plenitude’, the spirit of fecundity, *Dhishana*, goddess of vegetation (Johansson), whose forms were at first confused and *Ila*, the ‘offering’ who inspired Manu and some others, particularly the gods resulting from the fragmentation of *Agni*. The Gods had wives, to whom separate invocations were addressed in the ritual, but they were unstable figures. The abundant sexual representations in the *Veda* did not result in the creation of well-defined female figures.

The *Apsaras* (a name of uncertain origin) were water nymphs, associated with, or the wives of the *Gandharvas*, and later (secondarily) associated with the tree cult. They were also represented as dancers and as gamblers, they have magical powers and were emblematic of fecundity. The best known of them was *Urvashi*.

The *Gandharvas* (we hear also of the *Gandharva* in the singular) were more complex beings. In the *Rig-Veda* they were spirits of the clouds and the waters, and they had a relation with the *Soma*, which sometimes they guarded peacefully, and sometimes monopolized; it was the hostile aspect, illustrated by the seizure of the *Soma* by one of them, *Vishvavasu*, that predominated in the *Veda*. They were invoked during marriage rites, and were thought of especially in connection with women.

---

<sup>32</sup> Quoted in Kant Anjani (Dr.) “Women and the law” APH Publishing Corporation New Delhi-02 Ed. 2003

conferring or refusing pregnancy, and playing the part of lovers. Arguing from the myth of *Urvashi Dumezil* held the view that they were spirits of the new year, a group of initiates forming a sort of sect. Then he was led to emphasize once more the identification of the *Gandharvas* with the *Centaur*s.

It is observed that the *Vish*, "clan", gave its name to the *Vaishya*. These were mentioned only incidentally and they were known as *Vaishya* of classical India. Some texts showed them as dependants of other. "Opressable at will" and the saying was current that they were "the mud between the bricks". On the other hand they could rise to high positions.

As to the *Shudra* (an ancient racial grouping) perhaps descendants of the *Dasa*, their social status was depicted in an unfavorable light: they were serfs, excluded from the sacrifice and from the life of the *Aryans*. Nevertheless there were illusions to rich *Shudras* in conspicuous positions and held in respect.<sup>33</sup>

In the *Vedic* age inter-caste marriages were in existence.<sup>34</sup> In the post *Vedic* period, the Hindu sages approved of the *Savarna* marriages and disapproved of inter-*Varna* marriages.<sup>35</sup>

#### **(4) Position of Women in Epic Period**

The dawn of *Pauranic* period witnessed a significant change in the role of Hindu women and a concept began to gain strength that the role and activity of the women had to be limited and restrained to the basic ends of Hindu existence. The current was flowing then in different directions. The men wanted their dominance and make the Hindu women subservient to them. Neither they were left with freedom of choice, they became 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 rhythm of cycle of birth, and death and rebirth, and theory of *Pind Dan* threw the Hindu women to a place of subservience, whatever they received in the *Vedic* period, they began to lose in the *Pauranic* period. The women became dependant on men. The marriage also lost its independent value. It failed to

---

<sup>33</sup>. Louis Renore, *Classical India Volume-III Vedic India* (Translated from the French by Philip Spratt) published in 1957, P.131.

<sup>34</sup>. See the Article of Roy Alok on "Inter-caste and Inter religion Marriages: The Secularism in a plural society", published in AIR 1998 (*Journal*), 134.

<sup>35</sup>. See the Article of Roy Alok on "Inter-caste and Inter-religion Marriages: The secularism in a plural society", published in AIR 1998 (*Journal*), 135.

secure a firm grip in the changing events of Hindu life. The role of Hindu women in conjugal rights began to be confined to the kitchen and producing of son. The daughters became unwelcome to the then society. The new social ideals did not believe in giving freedom to Hindu women. They became physical machine of production of the *Praja* for the family. Where they failed their life became hellish. Son became important to them because through son the Hindu began to find their salvation. The Hindu pantheon god began to be figurative than super natural power in the mind of the Hindus and everything began to be understood in the light of attaining *Moksha* through son.

It was the period of transformation because the role of Hindu women changed substantially. Now, marriage began to be treated as *Sanskara* and a religious act. It became obligatory to marry. The freedom to marry or not to marry was then not allowed by religion. The question of choice also lost its meaning because that period attached no significance to consent of the girl in marriages. The marital life was tagged with religion and religion made her dependant because to her through marriage alone were granted salvation. This virtually degraded the position of Hindu women in the *Pauranic* era. Whatever independence she enjoyed in *Vedic* period seemingly began to fail with the passage of time and made her condition pitiable. Marriage was the only *Sanskara* for her and her consent became immaterial. The concept of son ship was affiliated to theory of *Pind-dan*, and for offering the *Pind* to the deceased the presence of the son was essential. Therefore, the women who could not beget a son for the husband suffered indignity and hollowness of her physical existence. One can then find a significant change in the attitude of the men towards women. The story of desertion cruel treatment hostile callous attitude began to show its seeds towards the Hindu women with far reaching effects. The following observations will testify the position of Hindu Women in the then period.

“In the ancient literature of India, dated from centuries before European culture began, in the great epics of the *Ramayana* and *Mahabharata*, women took distinguished part in the husband’s work, aiding him with her love and counsel, accompanying him, like *Sita* and *Draupadi*, even into exile. She shared in the public ceremonies and was accorded the highest rank and dignity.”<sup>36</sup>

---

<sup>36</sup> Her Highness the Maharani of Baroda and Mitra S.M.: “*The position of women in Indian Life.*” (Reprint) 1981.

The legal position of women, according to *Manu*, the earliest exponent of the law, was definitely unfortunate. They were always dependent on somebody either the father, or the husband, or the son.

पिता रक्षति कौमारे भर्ता रक्षति यौवने ।  
पुत्रौ रक्षति वार्द्धक्येन स्त्री स्वातन्त्र्यं महति ।

(“A woman is not entitled to independence; her father protects her in her maidenhood, her husband in her youth, and her son in her old age”)

Almost they were treated in law as chattels and a non entity in the family.

भार्या पुत्रश्च त्रय एवाधनाः स्मृताः ।  
यत् ते समधिगच्छन्ति वस्यैते तस्य तद्-धनं ॥

(A wife, a son, and a slave, these three even are ordained destitute of property; whatever they acquire becomes his property, whose they are)

And yet from the numerous stories in the Epics the story appeared different since *Manu* claimed that they held an honoured place in the home and in the society. *Manu* says: “Where women are honoured the gods dwell”<sup>37</sup> But that was in theory only.

### (i) The Maiden

At several places in the *Uttarakanda* is depicted the parent's anxiety at the advancing age of their growing daughter<sup>38</sup>. In the *Ramayana*, on the other hand, such expressions are but few; still we cannot ignore the statement which *Sita* made before *Anasuya* in the forest. She says that when she came of age, her father, *Janaka*, was beset with care and became as sad as poor man mourning the sudden loss of his little

<sup>37</sup> *Manu Smriti* 3/56; See also 3/58, 3/59, 3/62, 9/26, 9/96, 2/33, 2/129, 2/131, 2/132, 2/133, 2/216, 2/217 and also See Jawaharlal Nehru : “The Discovery of India” 9<sup>th</sup> Impression, 1989, P - 118

<sup>38</sup> It was binding on Kinsmen to give away the daughter in marriage to a bride groom *Valmiki's Ramayana* (VII 25.28: 4.21 :). The task of securing a proper husband for the daughter entailed much hardship for the parents, so much that “to be the father of a daughter”, (*Kanyapitritva*) become a source of anxiety to all who loved prestige. It was, first of all, not at all certain as to who would woo her. Then, secondly parents were concerned at their daughter's advanced youth and the reluctance of suitors to seek her for fear of rejection. A daughter keeps three families mother's father's and husband in suspense about her moral chastity; for, no one knows how things will go whether the bride will lead a good life and bring happiness (VII 9.8-11).

wealth; for the father of a nubile daughter, even though he be *Indra's peer*, has scorn and despise in store for him not only from his equals but also from his inferiors”<sup>39</sup>

The circumstances in which *Sita* herself was discovered by *Janaka* merit notice. It is held that while ploughing the sacrificial field, *Janaka* found her as a founding, smeared with dust.<sup>40</sup> The mythical origin of *Sita* as having sprung from the bosom of the Earth is however, unacceptable to commonsense (can it then be that *Sita* was an abandoned baby who was later found and brought up as his daughter, by king *Janaka*).

The epic furnished good ground to assume that once daughter was begotten, utmost solicitude was bestowed on her and full latitude given to her for complete development of her personality. The problem of her marriage was not decided somehow or anyhow by the parents, but was given due deliberation in respect of choice and selection guided by certain guiding principles and rules and not by any personal infatuation or fancy.<sup>41</sup>

The elaborate *Svayamvara* organized by *Janaka* with a desire to find the best warrior of the land as his son-in-law is a positive proof indicating that the daughter was not in any way an object of indifference in the family. *Draupadi's Swayamvar* is also an example in this regard. During his love complaints for *Sita* after her abduction, *Rama* feels particularly sad when he thinks how poignantly distressed *Janaka* would become on learning about the loss of his dear daughter.

The giving away of a daughter in marriage (*Kanya-dana*) was believed to confer good merit on her father; it was his express and holy duty (*para-dhamam*) to find a husband for his daughter. A daughter endowed with excellences, was like the goddess of prosperity (*Laksmi*) incarnate. “A new era of happiness and prosperity is said to have been ushered in the family of *Janaka* after he obtained and adopted *Sita* as a daughter.”<sup>42</sup>

Besides instructions in rituals girls acquired a sufficient knowledge of the scriptures, namely, *Smritis* and *Puranas*, not only from their parents but also from *Brahmanas* and hermits.<sup>43</sup> The knowledge gathered in this way seems to have been

---

<sup>39</sup> *Valmiki's Ramayana* II. 118.34-5,

<sup>40</sup> *Valmiki's Ramayana*, II. 118. 28-29;

<sup>41</sup> Valvalkar P.H.: “Hindu Social Institutions, p. 198 f. cf. I.33.10. See also Dr. Shanti Kumar Nanooram Vyas : “*India in the Ramayana Age*”, Edition, 1988

<sup>42</sup> *Valmiki's Ramayana* II. 118. 34.

<sup>43</sup> *Valmiki's Ramayana*, II. 29.8.13.

thorough. *Sita* in her father's home had come into contact with priests, *Brahmanas*, astrologers and learned men, and was at home in quite a few branches of traditional lore.<sup>44</sup> She is represented as fully conversant with the *Pauranic* lore of the day to<sup>45</sup> *Kaikeyi* and *Tara* too, displayed an extensive knowledge of the scriptures.

At the same time, parents were not oblivious of the necessity of equipping their daughters with practical education. Daughters were given instructions pertaining to their duties and obligations after marriage. *Sita*, insistent on accompanying *Rama* to the forest, told him that she was well instructed by her parents regarding wifely duties, rendering all further persuasion for her to stay back unnecessary. The princesses of the time were also initiated into political rights and duties so that they should prove valuable helpmates to their royal consorts. Besides, many girls were imparted training in some of the fine arts like music and dancing. For instance, ladies in *Ravana's* harem were dexterous at playing all sorts of musical instruments.

It appears that girls were not barred from even military training as it is clear from the fact that *Kaikeyi* accompanied *Dasaratha* to the *Devasura* battle. When the king was rendered unconscious by wound received in the battle, *Kaikeyi*, by her pluck and resourcefulness, removed him from the battle-field and saved his life.<sup>46</sup> This implies knowledge of driving war chariots and rendering first-aid. Physically strong women were not a rarity in those days. The sacrificial horse of *Dasaratha's* *Asvamedha* was decapitated by his eldest queen, *Kaushalya*, by her own hand with three strokes of the sword obviously, she must have been a very strong and true *Kshatriya* lady. In Lanka, women were trained as armed guards and the guards of *Sita* at *Ashoka Vatika* were only women soldiers bearing arms.<sup>47</sup>

## (ii) The Wife

Once married, the woman's position in her new home was that of a *Vadhu*<sup>48</sup> or daughter-in-law in relation to the parents of her husband. The epic clearly showed that the most cordial relations subsisted between parents-in-law and daughters-in-laws. *Dasaratha* and *Kaushalya* are shown to have the tenderest love for their daughter-in-

---

<sup>44</sup> *Valmiki's Ramayana*, II.29.9,17; VI.8.2.

<sup>45</sup> *Valmiki's Ramayana*, II.30.6,5 24.9, - 12;

<sup>46</sup> *Valmiki's Ramayana*, II.9. 15.

<sup>47</sup> *Valmiki's Ramayana*, V.17.15.

<sup>48</sup> *Valmiki's Ramayana*, I.77.11

law, *Sita*. This love manifested itself with a difference when *Sita* had to leave with her husband for the forest.

“Those women”, said Manu, who join with their husbands in the desire to have children, who are perfectly happy, worthy of respect and an honour – homes, are truly goddesses of fortune; there is no difference”<sup>49</sup>

In regard to a wife’s relations with her husband, the emphasis was unmistakably on faithfulness.<sup>50</sup> It was impressed on her that the husband is mainstay *Gatireka patir naryah*, and without him she simply could not live.<sup>51</sup> “The husband enhances the beauty of a female more than her ornaments.”<sup>52</sup>

This view is fully endorsed and declared that “Even if a husband is poor and is of a disreputable character, he should be ungrudgingly obeyed by the like of the wives: not to say about one who is crowned with qualities, kind self controlled of steady affection, righteous – soled and dear as a father or mother. It is known that a women’s spiritual guide is her husband and her only asceticism (*tapas*) is ministering to his comforts”.<sup>53</sup>

It is remarkable how *Sita*’s love and regard for her husband survived the rapid succession of the infamy and calamities of abduction, the joys and sorrows of subsequent release, the glamour and festivities of restoration and the tragedy and affliction of final repudiation.

### **(iii) Rights of Women**

Women had certain well defined rights (e.g. the right to protection and maintenance, to property and conjugal rights). The foremost rights of a wife, and the corresponding obligation of a husband, is the provision for her support and maintenance.<sup>54</sup> It has been always repugnant to Indian feeling that a husband should let himself be supported by his wife, as instanced by *Sita*’s contemptuous reference to actors living on the vice and earnings of their wives.<sup>55</sup> The word for husband is

---

<sup>49</sup> Livre IX, Sl. 26.

<sup>50</sup> *Manu* 5/151

<sup>51</sup> *Valmiki’s Ramayana*, II, 29.7;

<sup>52</sup> *Valmiki’s Ramayana*, V.16.26;

<sup>53</sup> *Valmiki’s Ramayana*, II 118.2-9.

<sup>54</sup> *Manu* 3/55, 3/57, 3/58, 3/59, 3/60.

<sup>55</sup> *Valmiki’s Ramayana* II.30.8.

‘*Bharta*’<sup>56</sup>, meaning supporter or nourishes, or *Pati* <sup>57</sup> protector; and for the wife ‘*Bharya*’<sup>58</sup> she that nourishes him by husbanding all the family resources. It is therefore, man’s duty, repeatedly stressed to shelter and cherish the woman he has married. She must be well provided with the comforts of life.<sup>59</sup> *Sita*, though intent on accompanying Rama to the forest, expects him to look after her in all respects.<sup>60</sup> It was disgraceful on the husband’s part to eat alone in the house ignoring his wife and children. *Rama* asked *Bharata* at *Chitrakuta* to appease the women at home and to keep them well protected.

The women were entitled to *Stridhana* which was defined as follows:

“What was given before the nuptial fire, what was presented in the bridal procession, what has been conferred on the wife through affection and what has been received by her from her brother, her mother or her father, are ordained the six fold *Stridhanam* or woman’s property”. *Mamū* and *Katyayana*.

According to *Narada*, what is given before the nuptial fire, what is presented in the bridal procession, likewise her husband’s donation (*daya*) and what is given by her brother or by her parents are ordained the six fold *Stridhanam*. These are six kinds of *Stridhana*.

It may be noted that the gifts to son-in-law had been considered as *Stridhana*. “What is presented to the husband of a daughter, goes to the woman, whether her husband live or die, and after her death, goes to her offspring.”<sup>61</sup>

The *Kanya-dhana* or bridal gifts offered by parents at their daughter’s marriage became her *Stridhana* in modern terminology. This property must have remained at the disposal of wife. Besides, kings occasionally conferred property and gifts on their wives who then acquired absolute rights over their use and disposal. Rama is said to have conferred on *Sita* an excellent pearl necklace created with precious gems, which she bestowed on *Hanuman* in token of his meritorious services.<sup>62</sup> The queens generally gave away the income from their property in charity.

<sup>56</sup> *Valmiki’s Ramayana*, II.62.8

<sup>57</sup> *Valmiki’s Ramayana* VII.48.17

<sup>58</sup> *Valmiki’s Ramayana*, III.2.17

<sup>59</sup> *Valmiki’s Ramayana*, III.47.4; VI.111.33.

<sup>60</sup> *Valmiki’s Ramayana*, II.30.15; 27.14

<sup>61</sup> Text cited in D.B. IV, I, 17 See also *Mamūsmṛiti*, 9/118; 9/194.

<sup>62</sup> *Valmiki’s Ramayana*, VI. 128. 77-9.

as their personal needs were met by their husbands. *Dasaratha* had conferred many villages on his chief queen, *Kausalya*, for the maintenance of her dependants.<sup>63</sup>

*Kausalya* was very rich on account of her vast *Stridhana* and hosts of initiates used to approach her for help.<sup>64</sup>

As for conjugal rights, it is emphatically laid down that the husband, during the proper season, must visit his wife and that it would be a sin for him not to fulfill her wishes then<sup>65</sup>. *Bharata* condemns the evil minded man (*dustama*) who does not let his wife have her rights when she has performed her ablutions at the end of her unclean period (*rtusnata*) and is “in mood” just as chastity was the most valuable possession of a wife, a husband too was expected to remain faithful to his spouse (*sva-dara-nirata*). *Bharata* condemns the man who remains away from his wife and consorts with the wives of others.<sup>66</sup>

Another duty of a husband and privilege of the wife was to share all sacred rites and ceremonies. She helped him in discharging two of his debts namely, to the gods by associating with him in sacrifices and to the forefathers by procreating sons for continuing the line. Her character as a *sha dharma*-charini indicates recognition of her status as an equal partner in man’s code of conduct. Husband and wife were supposed to share the fruits of their actions together. A wife, as already said, was the better half the very soul of the husband. Her presence was invariably necessary for initiation at all sacrifices. *Dasaratha*’s queens took part in the horse sacrifice<sup>67</sup> and the task of slaying the sacrificial horse devolved on the chief queen<sup>68</sup> Tara upbraided the fallen *Vali* “for having bathed without me your wife in the steam of Rama’s shafts at the end of your war sacrifice”<sup>69</sup>

Normally, religious prayers and sacrifices were performed jointly by husband and wife. If the husband’s participation was not available for some reason or another, his wife could perform the rites alone. In the absence of her husband she had the right of attending to the daily *Agnihotra*.<sup>70</sup> Worship of the Gods<sup>71</sup> and performance of

---

<sup>63</sup> *Valmiki’s Ramayana*, II.31.22.

<sup>64</sup> *Valmiki’s Ramayana* II.48. 32.21.

<sup>65</sup> *Manusmriti*, 9/4

<sup>66</sup> *Valmiki’s Ramayana*, II.75.5;

<sup>67</sup> *Valmiki’s Ramayana*, I.8.23-4.

<sup>68</sup> *Valmiki’s Ramayana*, I.14.33;

<sup>69</sup> *Valmiki’s Ramayana*, IV. 23. 27.

<sup>70</sup> *Valmiki’s Ramayana*, II.75.14;

*Sandhya* were not denied to women *Kausalya* performed all alone the *svasti-yaga ceremony* to ensure felicity for her son, evidently because *Dasaratha* was engaged in assuaging the sulky *Kaikeyi*. These instances show that women's participation in sacrifices was real and that very often husbands used to leave the affair to the exclusive charge of their wives when busy otherwise.

How an intelligent wife became her husband's true counselor by criticizing as well as appreciating his actions is exemplified in *Sita's* association with *Rama* when *Rama* proposes to depart to the forest leaving her at the Court of *Ayodhya*, she frankly deprecates the proposal and takes strong exception to his advice to her for being obedient and suppliant to *Bharata* in his absence.

The proverbial meekness of a Hindu wife before her husband and other relations, however often turned in to righteous indignation when she was unjustly slighted, ill treated or insulted. When *Dasratha* tries to go back on his solemn promise to *Kaikeyi*, to grant her the two boons, she upbraids him angrily,<sup>71</sup> *Surpanakha* bitterly censures *Khara* as spine less for his failure to punish *Rama*, and later scathingly criticizes *Ravana's* addiction to sexual enjoyments to the neglect of his royal duties.

#### **(iv) Glory of Motherhood**

Mother occupied a high pedestal of honour and love in the estimation of her sons. She was the centre of family life. A son, even unwillingly causing grief to his mother, considered himself wretched; which is clearly shown in *Rama's* lamentations in the forest for his helpless grieving mother. In *Rama* we have the example of an ideal son who is as considerate and respectful towards his step-mother as compared to his own mother. While instructing *Sita* on her duties at home during his sojourn in the forest, he stressed that she was to serve, his entire step – mother with equal devotion, since he regarded them all as his own.<sup>72</sup>

#### **(v) The 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 sanction in the

---

<sup>71</sup> *Valmiki's Ramayana*, II.26.30

<sup>72</sup> *Valmiki's Ramayana*, II.12.38-49

<sup>73</sup> *Valmiki's Ramayana*, II.26.32.

*Ramayana*. None of the wives of *Dasaratha* or *Ravana*, are represented as joining their husbands on the pyre. At the death of *Dasaratah*, *Kausalya*, in her lamentations exclaims that as a *Pativrata*, she would enter the burning fire embracing the corpse of her husband under cremation; but *vyavaharikas* or persons well versed in worldly conduct get her removed from the scene. This clearly shows that the practice of *Sati*, through not totally unheard of, was not accorded social sanction and was not generally viewed with favour.

In the *Uttarakanda*, however, an allusion to self immolation by widows is made: *Vedavati* relates to *Ravana* the story of her mother who gave herself up to the flames along with her husband, *Kusadhvaja*<sup>74</sup>. This is perhaps the only example of an actual sati in the entire epic.

Among the Aryan widows the question of their re-marriage did not normally arise in view of the solemnity and irrevocability of the marital tie in life as well as in death here and thereafter. The passage in the *Aranyakanda*, where *Sita* suspects that *Laksmana* wants Rama to die so that he (*Laksmana*) may himself get her for his wife is believed by some scholars to presuppose a widow's re-marriage with her brother-in-law as a matter of course, the younger brother taking the widowed wife of the elder.<sup>75</sup> But this surmise is without substantial evidence, and an Aryan widow is everywhere shown as leading a bereaved existence throughout her life.

Among the *Vernas*, however, prevalence of widow-re-marriage must be accepted as a matter of fact. *Tara*, at the death of *Vali*, bewails her widow's lot, but, after *Vali* is cremated, the new king *Sugriva* makes her his wife and forthwith showers love on her.<sup>76</sup>

There is no evidence to indicate the presence of a widow was help under suspicious on festive occasions. Among those who welcome *Rama* on his return from exile were his widowed mothers and *Rama* duly offered his respects to them.<sup>77</sup>

## (vi) The Purda

Another aspect of women's life in the *Ramayana* is the prevalence of a mild form of *Purda*. It appears that seclusion of women had assumed the form of a

<sup>74</sup> *Valmiki's Ramayana*, VII.17.14.

<sup>75</sup> J.J. Mayer : "Sexual Life in Ancient India," Vol. II, P. 436. See also, Iyas S.N.(Dr.) : "India in the *Ramayana* Age", Edition, 1988.

<sup>76</sup> *Valmiki's Ramayana*, IV.29.4.

<sup>77</sup> *Valmiki's Ramayana*, VI. 127. 49-50.

recognized social custom. When *Sita* set out with her husband for the forest, through public thoroughfares, regret is expressed by *Valmiki* that “a lady, who had so far not been seen even by the spirits of the sky, should now become an object of public gaze”<sup>78</sup> this implies that royal ladies did not ordinarily leave precincts of the palace in order to avoid curious gaze of all and sundry.

This practice of seclusion was however, not insisted upon in emergencies like the out break of a war, a *Svayamvara*, sacrifices and marriages. These are the only occasions in the *Ramayana* when women are found moving about freely in public.<sup>79</sup>

Among the *Vernas*, too, no evidence is available about the observance of *Purda*. When *Lakshmana* went to *Sugriva*'s palace to reprimand him for his neglect of duty, *Tara* appeared before him without any veil.<sup>80</sup> And ably pleaded *Sugriva*'s case before him.

The observance of the *Purda*, or *avagunthana* can be definitely proved to have been in the vogue among the *Raksasas* on the basis of a statement of *Mandodari*, wife of *Ravana*. *Ravana* done to death in the battle, his queens surrounding his corps gave up themselves to lamentations in the course of which *Mandodari* burst out: “Why do you not get angry, beholding me, having put off my veil, walk out on foot by the city gate? So you behold your wives who have thrown off their veils. Why are you not angry seeing them all come out of the city.”<sup>81</sup> This indicates that even folk among the *Raksasas* insisted on observance of *Purda* by their women.

#### **(vii) Woman in Society**

Theoretically, women were never an individual capable of taking care of herself; she was to be subject to her husband, son or other relatives.<sup>82</sup> But this should not be construed to mean that she was eternally enchained in household captivity. Women were allowed to take part freely in (religious) ceremonies, shows and entertainments. At such gatherings, they showed themselves in all their finery. On festive occasions, when the city wore a gala appearance with music playing and bards

---

<sup>78</sup> *Valmiki's Ramayana*, II.33.8

<sup>79</sup> *Valmiki's Ramayana*, VI.114.28.

<sup>80</sup> *Valmiki's Ramayana*, IV.33.38.

<sup>81</sup> *Valmiki's Ramayana*, VI.111-61-3.

<sup>82</sup> *Valmiki's Ramayana*, II. 61.24.

and minstrels swelling the jostling crowds, dancing girls and lovely maidens were invariably present to lend color and gaiety to the occasion.<sup>83</sup>

The woman was generally treated as a sort of property, the owner having naturally the authority to do what he liked with her. *Ravana* bracketed his wives with such property as food, articles of luxury clothes, house, city or country. The reference by *Sita* to *Sailusas* (actors) handing over their wives for others use again shows man as a woman's lord, free and not too tender towards her like property woman had to be constantly protected and guarded.<sup>84</sup> complete independence was never her right. "The first refuge of a woman is her husband, second the son, third the relations; no fourth she has"<sup>85</sup>. A wife and her sons are declared by *Rama* to be under the restraint of their elders.<sup>86</sup> The woman's *Yogaksema* (maintenance and protection) rested completely on the diligent vigil of man.<sup>87</sup> Since continuity of the family line was considered to be the main object of taking a wife it was a husband's duty to guard his wife carefully; for not well-guard she might bring disgrace to the family.<sup>88</sup>

A fair assessment and analysis of the seamy side of female character can be made only if it is examined dispassionately. It should be borne in mind that many of the above passages condemning women are put in the mouths of men who for some reason or another, were enraged with women, or wronged by them, or dissatisfied with their "responses". Most of the deprecatory remarks used in the *Ramayana* are employed with reference to *Kaikeyi* who, by her mean ambition and selfishness, had aroused the ire of all thoughtful persons of the age.<sup>89</sup> And do so to-day. These remarks, however, should not be taken as tarnishing the entire woman kind for all time. *Dasaratha*, while giving vent to his anger and grief on *Kaikeyi*, expressly states that he does not mean to disparage all women by condemning *Kaikeyi* for her craftiness and selfishness.<sup>90</sup> Good women like *Sita* are absolutely free from such failings and are worthy of being extolled for their devotion to their lords (like *Arundhati* among the gods).

---

<sup>83</sup> *Valmiki's Ramayana*, II, 15.8,12; 3.17.

<sup>84</sup> *Valmiki's Ramayana*, II.100.49.

<sup>85</sup> *Valmiki's Ramayana*, II.61-24

<sup>86</sup> *Valmiki's Ramayana*, II.101.18

<sup>87</sup> *Valmiki's Ramayana*, II.53.3.

<sup>88</sup> *Valmiki's Ramayana*, III, 50.7-8; VII. 9.11.

<sup>89</sup> *Valmiki's Ramayana*, II.66.29.

<sup>90</sup> *Valmiki's Ramayana*, II.R.100

### (viii) Marriage and Morals

Polygamy was almost the order of the day among the kings. Most of them whether *Aryan*, *Vanara* or *Raksasa* possessed large harems. *Dasaratha* is said to have had 350 wives, besides the principal queens. *Ravana* married many women and his harem contained a thousand mistresses.<sup>91</sup>

As a corollary of the husband's partiality for his favoured wife the lot of the other neglected wives was often poignant. So it was in the case of *Kausalya*. In spite of her being the foremost of *Dasaratha's* consorts, she was neglected to an inferior position as compared to *Kaikeyi*.

Apart from this, life in the harem was luxurious. The queens lived a gilded existence each in a separate palace with retinue and personal property or *stri-dhana*. The soft luxury, the pomp and splendor of the palaces, the imposing army of attendants and hangers-on, expensive food, bestowal of gifts on *Brahmanas* and supplicants (and their feeding) characterized the usual activities in a royal harem of the time. The sensuous life of the *zenana* is graphically depicted in *Valmiki* in a reference to *Ravana's* antahpura.<sup>92</sup>

In such a polygamous society, the commendable ideal of monogamy was not entirely lost sight of, and it elicits highest praise from *Valmiki*. The blind ascetic, who cursed *Dasaratha* for having killed his innocent son, could think of no other higher reward for his son's filial services than blessing him to attain to regions obtained by people observing the *Ekapatnivrata*.<sup>93</sup> It is however, Rama who has always been looked upon as the most notable exemplar of the ideal of monogamy.

A testimony to woman's capacity to rule comes from *Vasistha* who suggested to *Kaikeyi* that *Sita*, being the very self of Rama, could govern the realm in his absence as his representative.<sup>94</sup> An illustrious sage like *Vasistha*, having an intimate knowledge of customs and traditions, would not have put forth the proposal if such a right had not been recognized in those days. (*Vasistha's* suggestion could not, however, materialize owing to *Sita's* determination to accompany Rama to the forest).

---

<sup>91</sup> *Valmiki's Ramayana*, III.55.17; V.23.13.

<sup>92</sup> *Valmiki's Ramayana*, V.9-10.

<sup>93</sup> *Valmiki's Ramayana*, II. 64.43-4.

<sup>94</sup> *Valmiki's Ramayana*, II.37. 23-4.

## (5) Position of Women in Mauryan Period

“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 *Arthashastra*. *Brahmanical* treatises were usually serve with women, who, in later works are regarded without equivocation as an inferior species.”<sup>95</sup>

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 *Buddhist* order was one of tremendous importance, whereas their *Brahmanical* counter parts would not even admit of education for women. It has been suggested and with some justification, that for a woman life in *Buddhist* Society was not so trying as life in *Brahmanical* society, since she was not regarded primarily as a child bearer. The birth of a son was not necessary to *Buddhist* ritual as it was to Hindu ritual. Since *Buddhist* society accepted unmarried women the women tended to be less concerned with finding husbands and consequently less subservient. All the same marriage was still regarded as the most suitable occupation for a woman. Working women were restricted in 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 palaces, and as a last resort, setting themselves up as prostitutes and Courtesans. At a later state when Hindus ideas on this matter began to infiltrate into Buddhism the woman’s importance even within the home, declined and the older *Brahmanical* attitudes were revived”<sup>96</sup>

### (i) Property and Rights of Married Women

The position of women regarding *stridhana* and property was as follows:-

*Stridhana* may consist of *Vrithi*, or means of subsistence, or *abandhya*, such as ornaments. *Vritti*, thus includes *bhumi*, agricultural land, and cash (*thiranyadi*), above a minimum of 200 *karshapanas*,<sup>97</sup> which will produce an income from its investment. The minimum is mentioned because an amount below it will be too small to produce a living income. There is no minimum limit mentioned for jewelery.

---

<sup>95</sup>. Thapar Romila: “*Ashoka and the decline of the Mauryas*”, 11<sup>th</sup> Ed., 11<sup>th</sup> Impression, 1990, 87; See also Horner: “*Women in primitive Buddhism*”, P. 22ff.

<sup>96</sup>. *Ibid*

<sup>97</sup>. Gairola Shri Vachaspati “*Arthashastra of Kautilya & the Chanakya Sutra*”, 3<sup>rd</sup> Edition, 1984, 262

It was lawful for the husband to make use of his wife's property against emergencies like disease, scarcity, or calamity, and also in warding off dangers, and for a religious purpose. In the case of the first four approved kinds of marriage, when the husband and wife have become parents of two children, then the amount of *Stridhana* spent by them up to a limit of 3 years will not be required to be repaid.<sup>98</sup> A widow devoid of issue may remarry the brother of her husband with the consent of her father-in-law.<sup>99</sup>

## (ii) Remarriage

There is, again a difference between *Kautilya* and the later law-givers in regard to remarriage of woman. According to *Manu*, the sacred texts did not allow remarriage of widows, and it is condemned by the learned as fit for animals<sup>100</sup> he also stated emphatically that a maiden could be given in marriage only once<sup>101</sup> he did not allow a widow even to mention the name of another man in connection with marriage<sup>102</sup>

Again, the period of absence of her husband however prolonged was no excuse for the wife to choose a second husband<sup>103</sup> while *Yajna Valkyu* considered it to be a crime on the part of a man not to remarry after his first wife was dead<sup>104</sup>, he would not allow a woman to remarry under similar circumstances.

That meant further that a widow could not find relatives to associate themselves with the impious undertaking of giving her away for her second marriage and if she remarried by herself, she would be branded as a *svairini*<sup>105</sup>. The ideal laid down for a wife was even her self-immolation as a *Sati*.<sup>106</sup>

*Kautilya* treated the absence of husband as a cause for his wife's remarriage, as has been stated above. The time of such absence differed according to circumstances.

<sup>98</sup>. Gairola Shri Vachaspati "*Arthasastra of Kautilya & the Chanakya Sutra*", 3<sup>rd</sup> Ed., 1984, P. 262. See also "Chandragupta Maurya & His times", Madras University, Sir William Meyer Lecturer, 1940-41; by Radha Kumud Mookerji, 4<sup>th</sup> Ed; 1966, Reprint : Delhi, 1988, P. 153.

<sup>99</sup>. Gairola Shri Vachaspati. "*Arthasastra of Kautilya & the Chanakya Sutra*", 3<sup>rd</sup> Ed., 1984, P. 273

<sup>100</sup>. *Valmiki's Ramayana*, IX, 65, 66; See also "Chandragupta Maurya & His times" by R.K. Mookerjee, Ed. 1966 Reprint: Delhi, 1988, P. 161-162.

<sup>101</sup>. *Manu* IX, 47.

<sup>102</sup>. "Chandragupta Maurya & His Times" by Mookhrjee R.K., Ed. 1966, Reprint, Delhi, 1988, P-162.

<sup>103</sup>. *Valmiki's Ramayana*, IX, 76, 78 : *Yajnavalkya*, I, 89

<sup>104</sup>. *Valmiki's Ramayana* I, 89

<sup>105</sup>. *Valmiki's Ramayana* I, 63, 64, 67

<sup>106</sup>. *Valmiki's Ramayana*, I, 86. See also "Chandragupta Maurya & His Times" by R.K. Mookerji, Ed. 1966, Reprint, Delhi, 1988, P-162.

Such as caste, whether the woman was a mother or not, or whether she was provided with maintenance (*Aprajata*, or *Prajata*; *Prativihita* and *Aprativihita*). In the case of the husband being a Brahmin student who was absent to study for abroad, the period of waiting was extended to 10 years, and if she was a mother, to 12 years. Remarriage was not permitted where the husband was an officer of the state and was sent abroad on public duty.

Where the aforesaid period of waiting were exceeded, the wife was permitted to take a second husband of the same caste to prevent the extension of her family. The wife might also remarry a second husband after her liking (*yathechitam vindet*) where due to the absence of husband, she lacked maintenance and was not maintained by her relations, and was thus compelled to remarry as a means of livelihood, or of saving herself against difficulties<sup>107</sup>. In the case of the approved marriages of four kinds aforesaid (*Dharmavivaha*), remarriages was allowed to the wife who was a *Kumari* or a virgin, in case her husband had gone abroad, after waiting for his advent for the prescribed period varying from three months to one year. But the dissolution of the marriage was to be formally effected with the permission of the Court (*Dharmasthairvisrishta*)

## **(6) Position of Women in Mughal Period**

In Mughal period the position of women in general was subordinate to men. As Prof. Ashraf has observed "The functions and the position of a woman 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 ward ship 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 wards hip and the social laws and customs stamped her with a sort of mental deficiency"<sup>108</sup>

---

<sup>107</sup>. *Valmiki's Ramayana*, III. 4; See also, "Chandragupta Maurya & His Times" by R.K.Mükerji, Ed. 1966, Reprint : Delhi, 1988, P-162

<sup>108</sup>. K.M. Ashraf: *Life and conditions of the people of Hindustan*, P-192. See also Roychoudhury S.C.: *History of Muslim India*, Ed. 1986, P. 252-253.

The girls were considered a liability right from the time of their birth<sup>109</sup>. A mother giving birth to a number of girls in succession was despised. Amongst some of the *Rajput* clans the girls were killed at the time of their birth. According to James told the famous author of the annals and Antiquities of Rajasthan." the *Rajputs* resorted to that practice due to the scarcity of suitable matches due to the same clan and continuous inter-marriage between families of the same clan and continuous wars and feuds with the remote tribes together with the sentiment that unworthy match lowers the prestige of the bride's father.

Women as mothers, however, enjoyed a position of great respect. In all the sections of Hindu society, the mothers and other elderly ladies were given utmost respect and their commands were invariably carried out. The *Rajputs* particularly showed great regard to their mothers and never dared to go against their wishes. There were many instances which showed that the *Rajput* rulers never did anything without consulting their mothers. For example *Rana Sangram Singh* of *Mewar* always took his meals after paying respect to his mother. The Muslim also showed great respect to their mothers.

#### **(i) Dependence of Women**

Economically the Hindu women were completely dependent on men folk. They were not entitled to any share in the property even though they possessed lot of property in the shape of ornaments and jewelry etc. On the other hand, the economic condition of Muslim women was much better. They were entitled to a definite share in the inheritance and were free to dispose of the property. The Muslim women retained this right even after their marriage.

The position of Hindu women who were treated at par with men and given a 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.<sup>110</sup> The Hindus adopted *Pardah* as a protective measure to save the honour of their women folk and to maintain the purity of their social order. Probably the tendency to imitate the ruling

---

<sup>109</sup> Upadhyay Neelam & Pandey Rekha : "*Women in India : Past and Present*", 1st published, 1990, P.- 18. See also Col. James. Tod, "*The Anals and Antiquities of Rajasthan*", edited by W. Cookes, 1920, Vol. II, P. 739-740. See also Niccolac Ventian Irawin : "*Storia De Meagar*, Vol. II, P. 343.

<sup>110</sup> Majumdar R.C., "*Bengal in the 19<sup>th</sup> Century*" Calcutta, 1960

class was also a contributory factor for the adoption of *Pardah* by the Hindu families.<sup>111</sup> It may be noted that “the system of *Pardah* was followed mainly by the members of high class families amongst the two communities. The women of high castes rarely went out. Whenever they had to go out they went in covered palanquins. Even the middle class Muslim women observed *Pardah*. On the other hand, the Hindu women belonging to middle and lower classes did not observe *Pardah* and moved out without restriction. However, they used *dopatta* to cover their head when they went out. The women of poor families who had to help their menfolk in the fields and other pursuits also did not observe *Pardah*.”<sup>112</sup>

“*Purdah* seems to have grown in India during *Mughal* times, when it becomes a mark of status and prestige among both Hindus and Muslims. The custom of seclusion of women spread especially among the upper classes of those areas where Muslim influence had been most marked in the great central and eastern block comprising Delhi the United Provinces, *Rajputana*, Bihar, and Bengal. And it yet appears to be odd that *Purdah* has not been very strict in the Punjab and in the Frontier Province, which are predominantly Muslim. In the south and west of India there has been no such seclusion of women except to some extent among the Muslims.”<sup>113</sup>

## (ii) Education of Women

A word may be said about female education which was practically non-existent among both Hindus and Mohammedans in Mughal days. The author of *Qanun-i-Islam* speaks of girls being taught the Koran from beginning to end and elementary reading,<sup>114</sup> but their studies ceased at such an early age that they could not have learnt much. Occasionally also the daughters of the imperial house and of rich nobels were given tuition within the precincts of the harem as for example at the palace in *Fatehpur Sikri*, in which certain rooms were specially set apart for this purpose by *Akbar*.<sup>115</sup> Some of the ladies so taught distinguished themselves in the paths of literature; *Babur's* daughter, *Gulbadan Begum*, wrote the *Humayun-nama*;

<sup>111</sup> See also Upadhyay Neelam & Pandey Rekha : “*Women in India : Past and Present*”, 1<sup>st</sup> published, 1990, P. 17-18.

<sup>112</sup> Raychoudhury S.C.: “*History of Muslim India*”, Ed. 1986, P.– 250. See also Upadhyay Neelam & Pandey Rekha : “*Women in India : Past and Present*”, 1<sup>st</sup> published 1990, P.- 18.

<sup>113</sup> Nehru Jawahar Lal: “*The Discovery of India*,” 9<sup>th</sup> Impression, 1989, P. 243.

<sup>114</sup> *Qanun-i-Islam*, ed. Crooke(1921), P. 51. See also Upadhyay Neelam & Pandey Rekha : “*Women in India : Past and Present*”, 1<sup>st</sup> published 1990, P.- 18

<sup>115</sup> Lal N.N., *Promotion of Learning in India during Mohammedan Rule*, P. 202

*Humayun's* niece, *Salima Sultana*, was the author of many Persian poems: *Jahangir's* queen *Nur Jahan*, was highly educated and well versed in Persian and Arabic literature; so also was *Mumtaz Mahal*, wife of *Shah Jahan*. *Jahannara Begum*, daughter of *Shah Jahan* was taught the Koran and the Persian language by a learned Persian lady, *Satiunnissa* who eventually became *Sadr* or Superintendent of the harem; in the same way *Aurangzeb's* daughter, *Zebue-n-nissa*, was educated by *Hafiz Mariam*, whose family originally hailed from *Naishapur* in *Kurasan*. *Zebu-n-nissa*, who inherited her father's intellect and the family taste for literature, was a fine Arabic and Persian scholar, was an expert in calligraphy and collected a valuable library. The garden on the outskirts of Lahore, known as the *Char-Burji*, the only remains of which to-day are semi-ruined gateway, is said to have belonged to the princess and to have been the scene of her literary labors. Her literary studies must have done much to lighten the capacity which she underwent by *Aurangzeb's* orders, as a punishment for her complicity in Prince Akbar's rebellion and from which she was only released by death in May 1702. one cannot help expressing a word of regret that modern vandalism in the guise of the constructors of the *Rajputna* railway should have demolished the tomb which *Aurangzeb* ordered to be built for her remains in the "Garden of Thirty Thousand Trees." "Outside the Kabuli gate of Delhi"<sup>116</sup> Besides the princesses who have been mentioned, there were doubtless other women of high family who were given a literary education in the parental home, but their numbers can never have been large; while the general population of Muslim of the upper, middle and lower classes, were considered sufficiently educated if they were conversant with the internal economy and management of a household. Female education, in the modern sense of the term, was wholly foreign to the ideas and customs of Mughal India.

## **(7) Position of Women During The British Rule**

The position of women was not satisfactory in the early period of British rule. The reason being that they were the subject of adject exploitation and discrimination as was ordained in the *Sastric* texts.

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 Hindus.

---

<sup>116</sup> Sarkar J.N. : *Studies in Mughal India*, P. 79-90

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-marriage; the exposure of the female children by throwing them at the junction of the Ganges and the sea, the violence used to make women follow 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.”<sup>117</sup> Presenting the position of women in the pre-British India, it has been observed that:

“Uneducated, considered on a level with the *Shudras* married before their characters fully developed, transferred from the loving and sympathetic atmosphere of parent’s house to the house of the parents-in-law where an atmosphere of awe prevailed, apprehensive of supersession, 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.”<sup>118</sup>

According to Atlekar:

“... Devoid the benefits of education, brought up in the authoritarian atmosphere, having no opportunities to develop their natural capacities, women become helpless, illiterate, narrow minded and peevish...”<sup>119</sup>

Cursing the curse of polygamy, *Vidyasagar* says that “with the coolin *Brahmin*, the sacred rite of matrimony had been notoriously degraded to a system of shameful traffic. These men for some sordid gain of some paltry sum visited village after village accepting the hands of scores of maidens, the great majority of whom were destined never to enjoy the blessing of wedded life.”<sup>120</sup> Economically too woman became dependent on men:

---

<sup>117</sup> Shastri Shakuntala Rao; *Woman in the sacred Laws*, Bombay: Bhartiya Vidya Bhawan, (1959)171.

<sup>118</sup> Dube S.C. in Barbara ward (ed): *Women in the New Asia*, The Hague: UNESCO, (1963), 189.

<sup>119</sup> Atlekar AS, in Swami Madhavanand and Majumdar R.C. (Eds.) ‘*Great Women of India Ideal and position of Indian Women in social life*’ Almora 1953, P. 43-44.

<sup>120</sup> Vidyasagar Iswar Chandra, *Friend of India*, (March 30, 1865).

*"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."*<sup>121</sup>

It is hardly necessary to add that what preceded is not to idealise women's pitiable condition in India's pre-British part, but to show that the problems of women came to confront at the advent of the British rule were legion. The *Stati's* of woman was reduced to a "dumb driven cattle"<sup>122</sup>

In Christianity, the myth of creation which says that Eve was created after Adam to act as her companion and helpmate, accords a second place to woman in domestic and social life. She has to be subordinate first to her father and then to her husband. The mythic image of Eve as one who tempted Adam to eat the forbidden fruit from the Eden Garden has put a permanent stamp over woman as temptress and seducer and has given the husband right to control wife.

From the days of the East Indian Company India was turned into a backward country by the elaborate, ruthless systematic exploitation by the British from the start of their rule. The main concern of the British Raj was to exploit India to the full without endangering its traditional modes of control and integration which enabled them to capture India. The British colonialists found its solution in the use of middle men<sup>123</sup> who were to serve as a link between the traditional and modern structure. For this three institutions among other-education, religion and military were perceived. Through education, they tried to create an army of educated men who may be interpreters between the British and the millions who they governed; through religious propagation, they tried to create an army of convert Christians who may welcome them and protect their interest and through an army of Indians, they tried to crush Indians by Indians themselves.

The advanced economic condition of the country was ruined<sup>124</sup>. The entire framework of Indian society was broken down,<sup>125</sup> bodily and mental powers of the

---

<sup>121</sup> Nehru Jawaharlal, quoted in Pratima Asthana, *Women's Movement in India*, Vikas Publishing House Pvt. Ltd. Bombay, 1974, 9.

<sup>122</sup> Browne J.C.; *"Indian Infanticide: Its Origins, Progress and suppression"*, London, 1857.

<sup>123</sup> See Pandey B.N., *The Break up of British India* (London : Macmillan, 1969) ; Sovani N.V., *"British Impact in India"* in Metraux G.S. and Crouzet F. (eds.) *The New Asia* New York: Mentor Books, (1965); Spear, *A History of India* London: Penguin Books, (1965) Vol. II.

<sup>124</sup> Vera Anstey, *The Economic Development of India* London; 1929, 4<sup>th</sup> edition, 1952; Dutt R. Palme, *The economic History of India* London, 1901, 7<sup>th</sup> edition, 1950.

people were wrecked by administrative ring to them the Posta -- apreparation of opium;<sup>126</sup> new classes and vested interests, tied up with British rule were created and Indians were divided among themselves by encouraging one group at the cost of the other.

The 1857 war of independence brought men and women in the battle field. *Rani Laxmibai* of Jhansi (1835-1858) inspired women as well as men if India. The way she participated in it and died fighting valiantly at the battlefield was the revelation of potentialities of women.

The movement of social reform began during the British rule though with a slow pace when a few educated Indians coming in contact with western ideals started taking keen interest in ameliorating the condition of Hindu women. *Iswarchand Vidya Sagar*, *Mahatma Gandhi*, *Raja Ram Mohan Roy*, *Tilak* and other prominent figures laid emphasis on the education of the Hindu Female, abolition of child marriage, lifting of *Pardah* system, removal of dowry evil and *Sati Pratha*. The movement started with their efforts 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 provide some kind of identity and recognition to them in the 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 status of the Hindu women by passing many legislations in that regard.

### **(i) The Renaissance**

In the nineteenth century, India began to discover her long cherished ideals and cultural self-consciousness. This came to be known as the period of "Renaissance" in India. The remodeling of her cultural modes and indigenous values began herein. It meant a reawakening, a process of rediscovery, and a reform of the self. The reformers, who advocated the emancipation of women, aspired the restoration of such healthy and congenial conditions which once prevailed in the early

---

<sup>125</sup> Marx Karl. "*British rule in India in Karl Marx and Frederick Engels, Selected works*, Moscow, 1949-1950.

<sup>126</sup> Macaulay, Speeches, quoted in *William Digby, prosperous British India*, London, 1901, 63.

Vedic period. The renaissance of Indian women attained its fruition by “The renewed awareness of Indian’s glorious past”.

This implies that the removal of evil social practices was perceived not in the light of new liberal thought of the west but on the basis of revival of the *Vedic* feminine ideals which was thought to be truly democratic.<sup>127</sup>

In response to the enlightened Indian public opinion, the British rulers legislated against the glaring social evils. Significant legal reforms were the abolition of Sati in 1827, the suppression of infanticide in 1725 and 1804, and the removal of restriction on remarriage of the widow in 1856. Although these early reforms and legislations were not able to bring intended results, they did succeed in creating resurgence among Indian women. Under the western impact Indian women experienced an air of freedom and the stir of the new life. In the words of O’Malley “profound as has been the penetration of the west in to men’s ideas of religion, caste and national status, it has no where penetrated more deeply than its revolution of women.”<sup>128</sup> It brought to women a total new concept of themselves as persons “individually important and nationally needed.”<sup>129</sup>

To be sure social reformers woke up in the different parts of the country who worked for the cause of women. The wave of reformist thought in the nineteenth century initiated by social reformers led to very significant legislation, social and educational changes. It would be instructive to describe briefly the efforts of the enlightened men and women.

The father of the Indian Renaissance was *Raja Ram Mohan Roy* (1774) in West Bengal. He pleaded that it was erroneous to consider women as weak in intellect and virtue and deficient in resolution, trust worthiness and control over passion.<sup>130</sup> He opposed the custom of Sati and polygamy and encouraged widow-remarriage. He founded *Brahma Samaj* in 1828 and used English education to transform the social system responsible for the misery of women.

---

<sup>127</sup> See Gedge E. and Choksi M. (Eds), *Women in Modern India*, Bombay, 1929, 4.

<sup>128</sup> Malley S.S. O’, *Modern India and the west* London, 1941, 445-446. See also his *Indian Social Heritage*, Oxford Clarendon Press, (1934)

<sup>129</sup> Malley S.S. O’, *Modern India and the West* London, 1941. See also *India’s Social Heritage* Oxford Clarendon Press, (1934).

<sup>130</sup> See Ghose J.C., *English works of Raja Ram Mohan Roy*, Vol – II, Allahabad, 1906.

In fact, West Bengal produced several other social reformers. For instance, *Devendra Nath Tagore* (1817) and *Iswar Chandra Vidya Sagar* (1820) supported the views of *Raja Ram Mohan Roy*. *Keshab Chandra Sen* attacked *Kulinism*, public dances by women, and tried his best to make women men's true partner in life. He brought out a monthly magazine, *Bama bodhini*, exclusively meant for women. He denounced polygamy, encouraged inter-caste marriages and opposed *Purdah* system for women.<sup>131</sup> It was due to his courage and perseverance that the civil Marriage Act of 1872 was passed. *Rabindra Nath Tagore* (1861) and *Swami Vivekanand* (1863) also supported these views.

In Uttar Pradesh, *Huzur Maharaj Rai Salig Ram*, born in 1829 in Agra, had published a fortnightly journal *Prem Patra*, wherein he had advocated women's problems and created awareness among the people about the plight of women. He opposed *Purdah* and challenged the traditional beliefs that the husband is the virtual guru (teacher) of his wife. He did all what he could to remove illiteracy among women.<sup>132</sup> In Madras *Viresalingam* devoted himself to the women's advancement through education and marriage reforms.<sup>133</sup> *Venkata Rantam*, too, encouraged female education.<sup>134</sup>

The Hindu law-givers did not permit women to inherit property. So a revolutionary change took place with the passage of Married Women's Property Act of 1874 which widened the scope of *Streedhana* and the money she acquired through her artistic and literary skills. Side by side the *Streedhana* - movable property which was given to the women by her parents or husbands, also remained intact.

*Swami Dayanand Saraswati*, born in Gujrat in 1824, advocated the female education, widow remarriage and marriage by consent, like ancient *Swayamvara* and procured readmission in Hindu society of those who have once been converted to other religions through *Suddhi*. He founded the *Arya Samaj* in 1875 at Bombay.<sup>135</sup> *Mahadev Govind Ranade*, born in Bombay 1842 founded Indian Social Conference and supported the cause of woman. He favoured freedom in choice of marriage

<sup>131</sup> See Mazoomdar P.C., *The life and Teachings of Keshab Chandra Sen*, Calcutta, 1887.

<sup>132</sup> See Maharaj Huzun, *Prem Patra*, Vol. v Agra, 1903, 58

<sup>133</sup> See Gurunadhan J., *Viresalingam, The founder of Telugu Public Life*, Raja Mundry, (1911).

<sup>134</sup> Suryanarayana K., *Sir R. Venkat Ratnam, Raja Mundry*, 1952.

<sup>135</sup> See Saraswati Swami Dayananda Satyarthi Prakash, Translated as Light of Truth by Chirangiva Bharadwaj, Lahore: Kaviraj Satya Vrata Bharadwaj; (3<sup>rd</sup> ed); 1927. For a recent evaluation. See Kishwar Madhu, "The Daughters of Aryavarta", *The Indian Economic and social history Review*, Vol. 23, No. 2 1986, 151-186.

partners and wanted to infuse traditional virtues<sup>136</sup>. *Behramji Malabari* (1853) published a journal, *Indian spectator*, to spread his reformist ideas. He opposed infant marriage and enforced widowhood.<sup>137</sup> It was his effort which led to the Age of consent Act 1881 that raised the age of consent to 12 years.

*Gopal Krishna Gokhale* (1866) established servants of Indian society to carry out the work of social reform. He was deeply interested in the propagation of female education. He opposed the exclusion of women.<sup>138</sup>

Thus the male social reformers of the Renaissance differed about the nature and scope of the work, but all of them were of the view that women's lot need amelioration. Some reformers wanted women to return to the *Uddie* glory and others placed definite plans to eradicate their problems. Some reformers, say *Dayanand Saraswati*, gave a severe shock to the traditional society when launched the *Suddhi* movement and attempted to take back women in the Hindu fold who were converted to Islam or Christianity. Other reformers argued in favour of holistic development programme. Yet others fought for official intervention and social legislations. All reformers had to face opposition from the reactionaries in Hindu Society.

The major success of the social reformers of the period of renaissance was that they created an awakening among Indian women as a result of which they themselves came to assume the responsibilities of their own cause and began to raise the demand for their proper place in society.

## **(ii) National Movement**

*Gandhiji* born in Gujrat (1869) emerged on the Indian political scene in 1918. He appreciated qualities of Indian women: "To call women the weaker sex is a libel; 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 intuition is she not more self sacrificing has she not greater powers of endurance, has she greater courage? Without her man could not be. If non-violence is the law of our being, the future is with women."<sup>139</sup>

---

<sup>136</sup> See Ranade M.C., *Religious and Social Reforms*, A Collection of essays and speeches, compiled by Kolaskar M.B. Bombay (1902); J. Kellock, *Ranade Mahadev Govinda*, Calcutta, 1926.

<sup>137</sup> Gidumal D., *The life and life work of Behramji Malabari*, Bombay, (1888).

<sup>138</sup> Natesan G.A. (ed.), *Gopal Krishna Gokhale speeches*, Madras, (1909).

<sup>139</sup> Gandhi M.K., *Young India*, (February 9, 1925).

Gandhi devoted his attention to women's cause. He opposed child marriage<sup>140</sup> and deplored the treatment meted out to Hindu widows.<sup>141</sup> He wanted to give every widow the right to marry. Her condemned the system of *Purdah* and appealed to the parents to be broadminded. For him, the system of dowry was a real drag on society.<sup>142</sup> He wanted to bring women on equal footing with men.<sup>143</sup> He held men responsible for women's degradation.

It was Gandhi above all who was responsible for the creation of a new myth of Indian womanhood. He was well aware of the interest and revolutionary potential among the masses of oppressed Indian women. *Gandhi* identified with the enslaved women and channelised their rebellion into his non-violent, anti colonial struggle. The *Gandhian* ideology of "Indian womanhood" combined the female virtues which orthodox Hinduism had preached for several thousand years with certain qualities of the modern women. *Gandhi* revived the figures of the Indian epics, the *Mahabharata* and above all, the *Ramayana*. *Gandhi* chose *Sita* – the monogamous, chaste self sacrificing spouse of *Rama* as his ideal woman and not *Draupadi* the strong willed, passionate revengeful, polyandrous wife of the five *Pandavas* of the *Mahabharata*.

Besides or so to speak above *ahimsa* and self-sacrifice, *Gandhi* allotted woman the role of spiritualization of the so-called animal instincts, including the sexual desires. The highest aim of marriage for *Gandhi* was spiritual maturation, followed by service to the society, duties towards the family and ancestors, and mutual attraction between husband and wife.<sup>144</sup> Following *Sita-Ram* model, the wife's relationship to her husband ought to be one of worship a spiritual one.

*Gandhi* seems to have missed to see that he was advocating a concept of womanhood that was a queer mixture of orthodox Brahmonical Hindu tradition and the bourgeois Victorian ideal. For instance, on the one hand *Gandhi* pleaded for a type of revivalistic version of the orthodox Hindu womanhood that favoured the ascetic, puritan and *Brahmanical* tradition, while mixing up the *PATIVRATA* ideal of the husband-worshipping wife with the bourgeois Victorian ideal of the "clinging vine". In that process *Gandhi* perhaps forgot the ideal of womanhood of mass of hard

---

<sup>140</sup> Gandhi M.K., *To Women* ed. By A.T. Hingorani, Vol. III, Karachi, (1946), 122-123.

<sup>141</sup> Gandhi M.K., *Young India*, February 4, (1926).

<sup>142</sup> Gandhi M.K., *Harijan* May 23, (1936).

<sup>143</sup> Gandhi M.K., *Women and Social Injustice*, Ahmedabad, Navjivan, (1942); *The Role of women* Bombay: Bharatiya Vidya Bhavan, (1964); *Women* Ahmedabad : Navjivan, (1964).

<sup>144</sup> Gandhi M.K., *Woman and Social Injustice*.

working proletariat woman the toiling lower caste woman, and untouchable peasant woman whose ideals of woman hood did not fit in the *Sita* model. Needless to add, in these communities *patriarchal* institutions of the higher castes – monogamy, dowry, *Purdah*- were partly unknown. But Gandhi, like most western educated elite, was horrified at the ‘barbarous institutions’ of the so-called backward communities.<sup>145</sup> The moral superiority of the orthodox Hindu institutions was taken for granted by Gandhi, because even the “advanced” western societies had the some patriarchal institutions<sup>146</sup>.

The National Movement brought women from their homes to face *lathi*'s and bullets and gave them not only a consciousness of their own strength but a new vision of their true place in society. This has several implications for women. First, in the wake of national movement, it became easier for women to leave their homes to involve in the national cause as the movement was supported by their husbands and guardians. Secondly women themselves became aware of their capacity for work, suffering and leadership and organized themselves to fight for their due place both in the home and in the society. Thirdly, the nationalist movement further provided a suitable forum for women to assess their own work which began in the earlier part of the century with the creation of several women's organizations.

Between 1910 and 1920, the number of social organizations for women grew rapidly. Called by various names *Mahila Samiti*'s, Women's clubs, Ladies Societies they emerged in the cities and towns of British India and the native states. In 1917 the women of Madras formed the Women's Indian Association which fostered branches and affiliated many of the small societies already in existence.

The All-India Women's Conference (AIWC), which was founded in 1927, was the product of the reawakening of women. At its first met in Poona in 1927. AIWC confined itself to the educational programme for women, but it soon enlarged the scope of its activities. Unfortunately, a great proportion of its activities was confined only to the passing of numerous resolutions; the practical work undertaken to implement those resolutions was, however extremely merge. Thus, the demands embodied in the bold resolution of AIWC often remained, in substance, paper

---

<sup>145</sup> Gandhi M K., *Woman and Social Injustice*, 128-130

<sup>146</sup> Iravati karve sharply criticized the moralistic attitude of the Indian Government when it reformed the Hindu Law Code. See near Hindu Society, an interpretation, Poona, (1968), 163.

demands<sup>147</sup>. This was partly due to the fact that the members of AIWC were generally upper middle class women who participated in it more with a desire to dabble in social work.

### **(iii) Movement for Women's Property Rights**

The decade 1920-30 witnessed some developments of far-reaching importance. The most important question that was raised during this period was women's property rights to provide a degree of economic security to near female relations. And, the partial success was achieved in the form of the Hindu law of inheritance (Amendment Bill) of 1929 which recognized the son's daughter, daughter's daughter, sister and sister's daughter as heirs "if it is not contrary to special family or local customs having the force of law". The woman's right to property got further momentum when the Hindu Woman's Right to Property Act of 1937 was passed under which a widow has the same interest in the property as her husband had.

To be sure there were many other women of renowned who took the cause of women. Margaret E. Cousins (1878-1954) was keenly interested in the progress of female education<sup>148</sup>. Margaret Nobel (1867-1911), later known as sister *Nivedita*. *Sarla Devi Chaudhury* (1872), *Sarojini Naidu* (1879-1949), *Rustomji Fairdoonji heerabai Tata*, *S. Muthulakshmi Reddi* (1886), *Durgabai Deshmukh* (1909), *Rajkumari Amrit Kaur* (1929), *Vijay Lakshmi Pandit* (1900), *Kamala Devi Chattopadhyay* (1903), *Begum Sariffa Hamid Ali*, *Lady Magabharani Sadasiva Iyer*, *Cornelia Sorabjee* are some of the most prominent names among others,<sup>149</sup> who took part in the national movement and worked towards advancement of women.

The British Rulers did not interfere with the traditional Indian social system for their purpose was to rule and not to disturb the equilibrium by taking radical steps like reform of women. However, in the process of manipulating and serving their own interest, the colonial masters introduced English and allowed missionaries to operate. This created an Army of men who started questioning the utility of age-old social system. And, this subsequently led to the reform movement of the Renaissance period. In the 19<sup>th</sup> century educated Indian elites focused attention on the plight of women. They attacked the social practices of child-marriage the harsh treatment of

---

<sup>147</sup> Desai, *Women in Modern India*, 149.

<sup>148</sup> Mrs. Margaret Cousins and Her work in the India Madras, (1947); Rani Laksmibai Rajwade, A Tribute to Margaret Cousins, Madras, (1956).

<sup>149</sup> See the names in Asthana, *Women's Movement in India*, 125.

widow and *Sati-pratha*. They worked towards education of women in an effort to create the preconditions for improvement in the status of women. The social reformers emphasized the female aspects of Hinduism.

## **(8) Position of Indian Women During The British Rule Under Hindu Law and Mohammedan Law.**

The position of Indian women during the British rule under Hindu Law and Mohammedan law are as follows:

### **(i) Hindu Law and the Legislation**

During the ancient times, the Hindu law had a flexibility and an inherent capacity to grow. Usually the methods employed for the purpose of growth of the law were the process of interpretation and the assimilation of customs. After the introduction of the British pattern of justice in India, those traditional instrumentalities of legal change and growth ceased to operate. New customs could not be recognized by the Courts because of the theory that a custom could be enforceable only if it was ancient. The process of commenting, the powerful technique by which the Hindu jurists like *Vijnaneswara* and *Jimutvahana* shaped and molded the ancient law to keep pace with the needs of contemporary society, is simply not available to-day. A new interpretation of an old text would not be acceptable to the Courts howsoever eminent the interpreter may be. The Courts thus remained bound by the authority of the dead jurists. During the British period the growth of Hindu law was arrested and Hindu law came to be fossilized<sup>150</sup>

“In considering the propriety of altering or abrogating the Hindu or Mohammedan laws, all preconceived notions of the relative excellence of the English and the native systems of jurisprudence should be taken as secondary considerations; nor should it be called in question whether such systems are in themselves, good or bad; for it should never be forgotten, that, in the present state of society in India, they are undoubtedly the best adapted to the wants and prejudices of the people who form the great bulk of the population of the country; that they are an integral part of the faith of that people; and that though we may not be bound by absolute treaty, we have virtually pledged ourselves to preserve them by repeated proclamations and enactments.”

---

<sup>150</sup> Gajendragadkar : *The Hindu Code Bill* 53 Bom. L.R. (1951) See also M.P. Jain : “*Outlines of Indian Legal History*”, 3<sup>rd</sup> ed. 1972.

A few statutes were enacted to suppress some objectionable social practices which had come to have the sanction of law and custom amongst the Hindus. The first step in this respect was the abolition of in human practice of *sati* by Lord William Bentinck very early in the day. A very conspicuous evil which was sapping the very vitals of the society was the practice of child marriage. To discourage this practice, the child-marriage Restraint Act' was enacted in 1929.

A few Acts were passed to relay the rigidity and rigours of the joint family system and to amend the law of inheritance. By the Hindu gains of Learning Act, 1930, all acquisitions through learning, whether ordinary or specialized, whether imparted at the expense of joint family or of any member thereof became the self acquired and absolute property of the person acquiring the same. The Hindu public opinion had undergone a great change which can be seen from the fact that a less drastic bill of similar nature passed by the legislature in 1901 had to be disallowed by the governor in view of the intensity of public feelings against it. The Hindu Inheritance (Removal of Disabilities) Act, 1928, laid down that no person, except one who has been lunatic or idiot from birth, would be excluded from inheritance by reason only of his disease, deformity, physical or mental defect. The Act applies only to the *Mitakshara School* and not to the *Dayabhaga School*. The Hindu Law of Inheritance (Amendment) Act of 1929 altered the order of intestate succession under the *Mitakshara* law with a view to prefer certain near cognates to agnates. Thus son's daughter, daughter's daughter sister and sister's son were declared to be entitled to succeed next after the paternal grandfather. This was the result of a realization that the *Sastric* law needed to be altered in order to bring the rules of inheritance in correlation with the dictates of natural love and affection. Reference may also be made in this connection to the Caste Disabilities Removal Act, 1850.

## **(ii) Muslim Law and the Legislature**

The attitude of non-interference adopted by the British administrators in case of the Hindu Law was reflected much more tenaciously in the case of the 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 the 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 Muslims.

The first legislative change made in the law was in 1913 when the legislature enacted the *Wakf* Act. This was an attempt to undo the effect of a ruling given by the privy council in the famous case, *Abdul Fatah Mohammed Ishaq v. Roosomy Dhar Chowdhury*,<sup>151</sup> in which it was held that *Wakfs* which were founded for “aggrandizement” of family or gifts or charity which were illusory, or *Wakfs* which were merely nominal were void. The Muslims regarded this judicial dicta as being inconsistent with the true view of the *Shariat*. Therefore, the *Wakfs* Act of 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. The communities like *Khojas*, *memon's*, *vohras* had become converts from Hinduism to the Muslim religion. Even though they renounced the Hindu religion, they did not renounce the Hindu law completely and in the area of inheritance and succession, the Hindu law continued Courts as a customary law. The orthodox Muslims opinion did not relish this position. Therefore, in 1937, the *Shariat* Act was passed which abrogated these customs and brought these communities under the Muslim law. In effect, section 2 of the Act abrogated custom. In all matters except agricultural land, the rule of decision among Muslims was to be the personal law (*Shariat*)<sup>152</sup>. Another piece 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 followed mainly the *Hanafi* School of interpretation of the Muslim law.

The British Period saw the period of Renaissance. The English people encouraged women to pursue academic pursuits of life. Passed legislation for remarriage of widows, abolished *Sati Pratha*, restrained child marriages and permitted them to come out of *Purdah* and share liberty with their counterparts. But picture remained as gloomy as it had been in the past. Social bias and religious injunctions proved to be more effective in blocking their emancipation. The women proved to be too shy and indifferent to the effort of the social reformer and indifferent to the British legislation. When one is not interested in availing benefits showered on her, the

---

<sup>151</sup> *Valmiki's Ramayana* 22 I.A. 76

<sup>152</sup> Fyzee A.A.A., *Outline of Muhammedan Law*, 45 See also Jain M.P.: “*Outlines of Indian Legal History*” (3<sup>rd</sup> ed.) 1972.

legislation could do nothing and efforts of social reformers went in vain. Therefore, one is constrained to remark that during the British period, the Hindu women remained minimal and improvement of their position negligible.

### **(9) Position of Women After Independence**

Though at the time of independence, before the Constitution of India came into force, some reformers in the state of law were carried out by the British rulers at the instance of Indian social reformers like *Raja Ram Mohan Roy*. The concept of the women, being dependent, powerless and needing a charitable consideration 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 Freedom movement itself. It is observed that:-

Since independence, all India women's conference became interested in constructive work and left its agitation attitude of pre-independence era. Its activities since independence led to the enactment of some legislations concerning women. Some significant ones are: Act of women's legal Rights, 1952; the suppression of immoral Traffic in women and Children Act, 1954; the Special Marriage Act, 1954; the Hindu Marriage and Divorce Act, 1956; the Hindu Minority and Guardianship Act, 1956; Intestate Succession Act, 1956; the Orphanages and Widow Home Act<sup>153</sup> The Orphanages and other charitable Homes (Supervision and Control) Act, 1960; and the Dowry Prohibition Act, 1961, to cite a few.<sup>153</sup>

After independence, the legislature took a more positive attitude in the matter of law reform and undertook to enact some of the measures which the British administrators were hesitant to undertake. The Hindu legal system was based on a rigid caste system. The caste system however broke down, and came to be regarded as an anachronism, in course of time as a result of the release of new political and social forces. People began to think in a limited way in terms of a classless and casteless society. As a consequence, many old principles of Hindu law perpetuating the caste system needed to be done away with. The Hindu Marriage validity Act, 1949, constituted a great step in this direction. It came to validate inter-caste marriages<sup>154</sup>.

---

<sup>153</sup> Upadhyaya Neelam and Pandey Rekha : "*Women in India - Past and Present*", 1<sup>st</sup> Published, 1990 41.

<sup>154</sup> Jain M. P. "*Outlines of Indian Legal History*", , 3<sup>rd</sup> Ed. 1972, 603.

Before 1949, there was some confusion on the point and a few High Courts declared such marriages void<sup>155</sup>. The Act of 1949 removed this confusion and declared such marriages as valid and thus sought to help in the consolidation and integration of the Hindu society. It was no doubt a step forward towards the evolution of a casteless society which is the great need of the day in India.

The Indian Constitution came into force in 1950 guaranteeing Indian citizens and non-citizens certain basic human rights called as Fundamental Rights. Article 14 of the Constitution of India guaranteed every person equality before the law and equal protection of law within India; Article 15 of the Constitution prohibited discrimination against any person on grounds of religion, race, caste, sex, place of birth or any of these. Article 15(3) stated that nothing in this Article shall prevent the state from making any special provision for women and children. Article 16(1) of Indian Constitution guaranteed equality of opportunity in matters of public employment for all citizens. According to Article 16(2), no citizen shall on grounds of sex, among other grounds, be ineligible for, or discriminated in respect of employment or office under the state.

#### **(a) Position of Hindu Women**

The position of Hindu women after independence under Hindu Law is improved. In a family she has the place of honour. A Hindu can not have more than one living wife. In 1955 Hindu marriage Act was passed under which following relevant provisions have been made.

According to the Hindu Marriage Act, 1955, a marriage between two Hindus is void, if either party has a spouse living at the time of the marriage<sup>156</sup> or the parties are within the degrees of prohibited relationship, or the parties to the marriage are *Sapindas* to each other. The prohibition extends to the existence of a common lineal ancestor up to the three degrees on the mother's side and up to the five degrees on the father's side and up to the five degrees on the father's side. However, the law recognizes custom which permits marriage within the prohibited degree. This will safeguard marriage permitted in southern India of first cousins or maternal uncle and niece. Where there is no such custom, the marriage is void. Punishment has also been

---

<sup>155</sup> *Pudiava v Pavanasa*, I.L.R. (1922) Mad 949; *Lakshmi v Kalian Singh*, 2 Bom. L.R. 128; *Padam Kumar v Suraj Kumari*, I.L.R. (1906), All 458; *Gopi Krishna v. Mt. Jaggo*, 63IA 295.

<sup>156</sup> *Sarala Mudgal (Smt.) President Kalyani and Others v Union of India and Others*, (1995) 3 SCC 635.

provided in the Act. At the same time, the Hindu Marriage Act and the Child Marriage Restraint Act 1929 provide for some punishment for such marriage. Section 18 of the former provides that any one who procures a marriage for himself or herself in contravention of Section 5(3) of the Hindu Marriage Act, 1955 may be punished with simple imprisonment of up to 15 days of time extending up to Rs. 1000 or both. In spite of these provisions, the Law is generally, violated in many parts of India.<sup>157</sup>

### **(i) Voidable Marriages**

A marriage brought about by force or fraud may be annulled by the party whose consent to the marriage has been obtained by fraud or force. For instances, if a girl is forced or fooled into marrying a man by the actions of her father, she may apply for a decree that the marriage is invalid. The petition being presented within one year of the discovery of fraud or cessation of force. The petitioner must not have with her consent lived with the respondent as wife after the discovery of fraud or cessation for force. A marriage may also be annulled when it is not consummated or if either party is not capable due to either mental or physical infirmity or deficiency, to perform the marriage, i.e. coitus of either party has been mentally incompetent to consent to the marriage at the time of its solemnization, being either lunatic or idiot, the marriage is voidable. If a woman is pregnant by a third party, i.e. not the bridegroom and the groom is in ignorance of this at the time of marriage, the marriage is voidable.

### **(ii) Divorce**

Section 13 and 14 of the Hindu Marriage Act deal with divorce. Section 13 of the Act states that adultery and cruelty are each sufficient grounds for obtaining a divorce. Cruelty need not be physical and approaching of damage to body or mind or health is also termed cruelty under this section. Mental cruelty must be such that it has adverse effects on the petitioner's health, or can be proved to have such effects in future.

Divorce may be obtained if either spouse has deserted the petitioner for a continuous period of not less than two years immediately preceding the petition, if the respondent has. Converted to another religion or is of either incurably unsound mind

---

<sup>157</sup> See an editorial Article "Rajasthan Men Bal Vivah" published in "Swatantra Bharat" (Lucknow) Dated 7.6.83

or has been suffering continuously or intermittently from mental disorder so that the petitioner cannot reasonably be expected to live with him or her. Incurable or virulent leprosy venereal disease in a communicable form and renunciation of the world by entering any religious order are grounds for divorce or should one spouse be missing for a period of seven years, without those who should normally hear of his or her existence having knowledge of it. Petition for decree of divorce may be presented by either party if there is no presumption of cohabitation within one year of a judicial separation or of a decree for restitution of conjugal rights.

### **(iii) Wife's Grounds for Divorce**

Prior to 1976, there were two additional grounds of Divorce for wife under Section 13(2) of the Hindu Marriage Act. Now two more have been added and there are four grounds as given below; viz. –

1. Remarriage of the husband during the existence of a 1<sup>st</sup> marriage i.e. a wife living. Any wife (former or latter) of the polygamous marriage may seek divorce on this ground.
2. Husband guilty of rape, sodomy and bestiality. After 1976 two more ground were added.
3. No cohabitation after maintenance was granted.
4. Repudiation of marriage by the wife if she was married before 15 years of age.

### **(iv) Divorce by Mutual Consent**

If the parties have been living separately for one year and state that they are unable to live together and that they mutually agree to the divorce, the marriage is dissolved.

### **(v) Judicial Separation**

Judicial separation is a decree whereby a husband and wife are not required to cohabit. They remain legally bound in marriage in other respect. One year of judicial separation is sufficient ground for divorce.

### **(vi) Rights of Daughters**

Daughters have equal rights as sons to their father's property. Daughters also have a share in the mother's property. They have a share in the ancestral property.<sup>158</sup> When unmarried, they have rights to shelter in the parental home, maintenance according to the income and status of their family and the right to have their marriage expenses paid out of the assets of the joint family.

A woman has full rights over any property that she has earned that has been gifted or willed to her, providing she has attained majority. She is free to dispose of her property, gift or will as she thinks fit.

### **(vii) Rights of Wife**

A married woman has exclusive right over her *Stridhan* property. Unless she gifts it as part or wholly to anyone, she is the sole owner and manager of her assets whether, earned inherited or gifted to her. Regardless of her income the wife is entitled to maintenance, support and shelter from her husband, or if her husband belongs to joint family, then from the family. On partition of a joint family estate, she is entitled to a share equal to any other heir. Similarly, upon the death of her husband, she is entitled to an equal share of his portion together with her children and his mother.

### **(viii) Rights of Mothers**

She is entitled to maintenance from children. She is also a class I heir. All property owned by her may be disposed by sale, will or gift as she chooses. In case she dies intestate her children, inherit equally, regardless of their sex.

### **(ix) Rights of Adoption**

Only a Hindu may adopt another Hindu under certain conditions. No persons of any other religions persuasion is entitled either to adopt or to be adopted. An adult Hindu, either male or female may adopt a child of either sex provided that he or she has no child of the same sex.<sup>159</sup>

---

<sup>158</sup> Section 6 of the Hindu Succession Act, 1956

<sup>159</sup> Hindu Adoption and Maintenance Act, 1956.

## **(b) Position of Muslim Women**

As regards the position of the Muslim women under Muslim law is concerned the fact is that the Muslim law has not yet been codified in a modern society. Where at least in theory the position of women is accepted as equal, it is observed that the provisions like in most other personal laws are grossly inadequate.

### **(i) Muslim Marriage**

The Muslim marriage is a contract between two parties of different sexes who agree to cohabit on certain terms.

The ceremony of *Nikah* binds the two together unless a divorce takes place, for life. In *Sunni* law, the ceremony must occur in the presence of two witnesses, if it is to be valid. The presence of witnesses is not a prerequisite in *Shia* law. Both parties must agree to be married though, in the case of the bride, silence is interpreted as consent. Divorce is an integral part of Muslim law, as is the provision for more than one wife. Though advised against, it is accepted in religion and in Indian law that a man may have up to four wives. If he marries a fifth time, while still being married to four other women the marriage is not void, but irregular. It may be rectified by divorcing any one of the other wives at a date later than the performance of the fifth ceremony.

### **(ii) Mahr**

*Mahr* is the dower or form of bride price paid by the man to the woman he marries. It is meant to protect her in case of abandonment in favour of other women divorce, or neglect by maintaining her.<sup>160</sup> According to *Sunni* law, if the time and mode of payment have not been specified, it is deemed payable promptly, in part and partly deferred, the proportion of each payment being regulated by various factors such as custom, amount of dower and status of the parties. *Shia* law, however regards dower as payable promptly, unless otherwise specified. In the case where it is not settled how much of the dower is prompt and what part of it is deferred, the *Shia* Law holds that the whole of dower is prompt; the *Sunni* Law, however, holds that only a part is prompt. This part is to be fixed with reference to (1) Custom or (2) the status of the parties, and (3) the amount of settled dower.<sup>161</sup>

---

<sup>160</sup> Baillie's Digest

<sup>161</sup> See *Taufik-un-nissa v. Ghulam kandar*, (1877). 1 All 506.

### **(iii) Rights and Duties of a Wife Under Muslim Law**

Apart from cohabiting with her husband under all normal and acceptable conditions, and his right to demand obedience from her, a Muslim woman is bound to observe *Purdah* in accordance with the social position of the parties and local custom.

She is entitled to maintenance from the husband in a manner suitable to his economic status, regardless of her own wealth. She is also entitled to an equal share of his company and equal treatment in all respects to his other wives. She is also entitled to dower and residence at his house. She does not lose her identity, but is at liberty to deal with her property independently.

### **(iv) Muta Marriage**

A *Muta* marriage is fixed term marriage which to be valid require both the specification of the duration of the marriage and the payment of a fixed sum as dower or *Mahr*. In case the period is not specified, it may be assumed that the ceremony is binding in the same way as a *Nikaah* or marriage for life. This form of marriage is practiced only by the *Shaiite* Muslims. The parties have no mutual rights of inheritance though the children are legitimate and have full rights of inheritance from both parents. In case cohabitation occurs after the expiry of the period contracted, children are still accorded legitimacy. The marriage of *Amina* a minor girl of 10 years age, with Sheik Yahya Al Sagish, and old person of 60-65 years age is an example.<sup>162</sup>

### **(v) Dissolution of Muta Marriage**

Being contractually limited in time, the marriage is automatically dissolved upon expiry of the contracted term. It may also be concluded at any time by the husband, who makes a gift of the term to the wife. If the marriage is consummated the wife is entitled to the full dower even if the contract is prematurely dissolved by the husband, but if it is not consummated she is entitled only to half. The wife may leave the husband before the expiry of the term in which case, she is entitled to a proportionate part of the dower. Even in the case of fulfillment of term or the existence of children, the wife has no right to maintenance. A woman married in the

---

<sup>162</sup> See IndiaToday (Hindi) dated 15<sup>th</sup> Sept. 1991, P.39, Political and Law Times Dec. - Jan. combined issue, year-2, issue- 1 P. 10-11

*Muta* form is not entitled to maintenance under the *Shia law*. But it has been held that she is entitled to maintenance as a wife. <sup>163</sup>

### **(c) Position of Christian Women**

Every marriage<sup>164</sup> between persons one or both of whom are Christians must be solemnized according to Christians or one Christian and one non – Christian which are not so solemnized are not recognized in law, except under the Special Marriage Act. The Christian Marriage Act, 1872 permits marriage between Roman Catholic and Protestants.

A marriage may be solemnized between two persons either or both of whom are Christians if neither party has a living spouse at the time of marriage, neither party is either idiot or lunatic at the time of marriage and the parties are not within prohibited degrees of relationship. The legal age of majority, as in all marriages is 18 for women and 21 for men.

#### **(i) Rights of Daughter**

She inherits equally with any brothers and sisters to her father's estate, or her mother's. She is entitled to shelter maintenance before marriage, but not after, from her parents. She has full rights over her personal property, upon attaining majority. Until then her natural guardian is her father.

#### **(ii) Rights of Wife**

She is entitled to maintenance, from her husband, but his failure to provide the same is not, by itself ground for divorce. Upon death of her husband, she is entitled to one-third share of his property the rest being divided among the children equally. She must inherit a minimum of Rs. 500.00 from her husband's estate, supposing the estate is more than this amount. In case it is not she may inherit the whole.

#### **(iii) Rights of Mother**

She is not entitled to maintenance from her children. In case any of her children dies without spouse or living children, she may inherit one fourth of the assets.

---

<sup>163</sup> Section 125 of the Criminal Procedure Code 1973.

<sup>164</sup> The Indian Christian Marriage Act, 1872.

#### **(d) Position of Parsi Women**

It was observed that – “*Parsi* women are discriminated against by laws which have no basis in the communities religious beliefs. It has been seen how the ownership and inheritance rights of Hindu and Muslim women are affected by their respective laws. The *Parsi*, a community with 90% literacy, a strong hold on the industrial and professional life of the country although they are one of its smallest minority communities, have among the most in just inheritance laws in the country today. Which, finally only goes to prove the discrimination and gender biases do not disappear with “progressive education”.<sup>165</sup>

Like Hindu and unlike Muslim law, there are separate rules for the distribution of the assets of a male and a female the son's share of his father's property is twice that of a daughter: the widow gets only as much as any of her sons.

A *Parsi* woman is afforded no protection against arbitrary decision either – for where as in Muslim law a father cannot disinherit his wife or daughter he can only will away one eighth of his property according to his wishes – a *Parsi* male is not bound by any such restriction.

Women are discriminated against even in the final application of such unsatisfactory laws. *Parsi* law in India applies to three categories of *Zoroastrians* – persons de-seconded from the original Persian emigrants, born of *Zoroastrian* parents; children of *Parsi* fathers by non-*Parsi* women who have been finally *Zoroastrians* from Iran, permanently or temporarily residing in India. Children of *Parsi* women married to non-*Parsis* have no rights as under *Parsi* law they are not considered *Parsi*. There is no satisfying plantation for such gross bias.

Priests scholars and lay people, all that they can offer are unscientific conjectures about the superior hereditary genes of the male and the like. *Parsi* personal law is also based on Hindu custom and the rules of English common law. The first *Parsi* migrants were allowed to stay in the kingdom of Jedi Reno on the west coast of India on the strict condition that they would adopt the language and some of customs of the state and that they would not convert this people to their faith. Being so ancient, there is little documentation of legal system governing the *Parsi* when they first landed in India. But they took on Hindu customs and institutions like the

---

<sup>165</sup>. “*The law and Indian Women*” : A study by the YWCA of India, Printed by Madhulika's P. - 34

panchayat for administration of their affairs. Priests had the final say in all religious matters.

This however, applied only to the three Presidency towns of Bombay, Calcutta and Madras. Elsewhere the *Diwani Adalat* established by Warren Hastings in 1772 as the highest civil Courts of the district, continued to apply the personal laws of every community in matters of inheritance marriage and religion on the basis of "Justice and equity".

Finally, in 1955 after much discussion, a *Parsi Law Association* was created to make a thorough study of *Parsi* custom and put forward legislative proposals. Two statutes were enacted in 1965 namely the *Parsi Marriage and Divorce Act* and the *Parsi Intestate Succession Act, 1936*. The *Succession Act, 1925*, and finally modified by an *Amendment Act in 1939*. Whereas in 1939 these rules conferred better rights to women than existing Hindu and Muslim law, with the passage of time they have gone out of step with progressive social trends.

*Parsi* women also share the fear of extinction of community and most of them have resisted changes in their personal law. Those who have not too preoccupied with the trauma of "expulsion" from the community which is the fate of all those women who marry people of other religious denominations to organize protest. But the first time they did they were successful. This was in 1981 when practicing Zoroastrian women married to non *Parsi* were denied the right to vote in their community's local elections unless they submitted a written affidavit stating, that they "practiced" the *Parsi* faith. They appealed to the Court to prevent such humiliation and won. As more *Parsi* women join the main stream of dissent and protest they will find the support needed to stir their community from its present stagnancy.

## **(B) INTERNATIONAL DEVELOPMENT**

### **(i) Universal Declaration of Human Rights, 1948**

The United Nations in 1948 adopted the Universal Declaration of Human Rights, which sets out the principles and normative standards securing respect for human rights everywhere in the world. Universal Declaration which is a golden piece of document of human rights, is based on certain philosophy which assumes that the right to equality and liberty is the birth right of every human being and can not be alienated; and that as human being is a rational and moral being he is different from

other creatures on earth and thereby entitled to certain rights and freedoms which other creatures do not enjoy.<sup>166</sup>

Universal Declaration also sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and Fundamental freedoms, forbids distinction of any kind including sex.<sup>167</sup> The first cornerstone of the Declaration proclaims the right to life, liberty and security of person a right essential to the enjoyment of all other rights.<sup>168</sup> This also introduces certain civil and political rights, which are set out in the Declaration.

Among which most important principle is equality before law and entitlement of equal protection of law without any discrimination.<sup>169</sup> It does not however always reflect human practice. Every human being is entitled to protect his privacy, home, family, honour and reputation from arbitrary interference.<sup>170</sup> It may not be out of context to mention that after lengthy debates the U.S. Supreme Court in *Roe v. Wade*<sup>171</sup> had held that a pregnant woman has Constitutional right to terminate her pregnancy and this right to abortion was a part of her Fundamental right of personal liberty. This Declaration entitles every men and women of full age to marry and found a family. Free and full consent of intending spouses is necessary before entering into marriage.<sup>172</sup> However, in India the right to marriage and the procreation of children is not guaranteed as Fundamental right in the Constitution.<sup>173</sup>

---

<sup>166</sup> Article 1 of the Universal Declaration of Human Rights, 1948 (hereinafter described as UDHR) reads as follows. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

<sup>167</sup> Article 2 of UDHR state that: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdiction or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

<sup>168</sup> Article 3 of UDHR: Everyone has the right to life, liberty and security of person.

<sup>169</sup> Article 7 of UDHR provides that: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

<sup>170</sup> Article 12 of the UDHR reads as follows: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference of attacks.

<sup>171</sup> (1973) 410 US 113:35 Law Ed. 2d 147.

<sup>172</sup> Article 16 of UDHR reads as follows:

1. Men and Women of full age, without limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

The second cornerstone of the Declaration introduces certain economic, social and cultural rights-the rights to which everyone is entitled to “as a member of society”. These rights are indispensable for human dignity and free development of personality and indicate that they are to be realized through national effort and international co-operation, the extent of which depends on the resources of the state.<sup>174</sup>

The economic, social and cultural rights include right to work in just and favourable conditions of work. It also provides for equal pay for equal work and just and favourable remuneration to ensure one’s family an existence worthy of human dignity.<sup>175</sup> This right is of utmost importance in the context of women’s right as they are often paid lower wages by creating an artificial difference in the nature of work.

The Declaration also provides for security in the event of widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance.<sup>176</sup>

United Nations Declaration of Human rights (UDHR) does not elaborate how the rights set out in this declaration relate to women. It does not talk of the “private sphere” the area in which most violations of women’s occur. This separation of women’s rights from human rights rendered most violations of women’s rights invisible. Educated, propertied men feared the violations of their civil and political

- 
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
  3. The family is the natural and Fundamental group unit of society and is entitled to protection by society and the state.

<sup>173</sup> *Mukesh Kumar Ajmera v. State of Rajasthan*, AIR 1997 Raj 250.

<sup>174</sup> Article 22 of UDHR : Everyone, as a member of society, has the right to social security and is entitled to realization through National effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

<sup>175</sup> Article 23 of UDHR is as follows:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

<sup>176</sup> Article 25 of UDHR:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing housing and medical care and necessary social service, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack or livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock’s, shall enjoy the same social protection.

rights in the “private sphere” because that would affect their property and privileged position (which is due to property); they were not concerned with the violations in the private sphere of their home as they were the masters of that territory.<sup>177</sup> “Private – public distinction is “a dichotomy largely used to justify female subordination and to exclude human rights abuses at home from public security.<sup>178</sup> In addition, the exclusion of sexual and other violence against women from the human rights agenda stems from the failure to view the oppression of women as political. It has rightly remarked “female subordination runs so deep that it is still viewed as inevitable or natural.” It is actually politically construct reality maintained by patriarchal interest, ideology and institutions.

## **(ii) International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, 1966**

The Preamble and Article 1, 3 and 5 of two covenants are almost identical.<sup>179</sup> The Preamble to each covenant recalls the obligation of States under the United Nations Charter to promote human rights, reminds the individuals of his responsibility to strive for the promotion and observation of those rights and recognises that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created where by everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.<sup>180</sup> All the rights

<sup>177</sup> Alam Aftab (ed.), *Human Rights in India : Issues and Challenges*, Raj Publications, Delhi, (2000) 51.

<sup>178</sup> *Id*

<sup>179</sup> Article I of International Covenant on Civil and Political Rights 1966 reads as follows:

1. All people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Government and Trust Territories, shall promote the realization of right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The above is identical to Article 1 of International Covenant on Economic, Social and Cultural Rights, 1966.

<sup>180</sup> (a) Article 3 of International Covenant on Civil and Political Rights 1966 (hereinafter described as ICCPR) and International Covenant of Economic, Social and Cultural Right 1966 (hereinafter described as ICESCR): The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

(b) Article 5 of ICCPR and ICESCR provides:

included in these two covenants are related to rights of women in one way or other, but it is not possible to discuss all the right in this limited sphere. The Civil and Political rights recognize the right of men and women of marriageable age to marry and to found a family, and the principles of equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.<sup>181</sup> It also provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of law.<sup>182</sup>

Covenant of Economic, Social and Cultural Rights recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensures in particular equal wages for work of equal value without discrimination of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.<sup>183</sup>

It also recognises the right of everyone to the enjoyment of highest attainable standards of physical and mental health. It also aims at to reduction of still birth-rate and of infant mortality and health development of the child.<sup>184</sup> ICESCR also

---

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.

There shall be no restriction upon or derogation from any of the Fundamental human rights recognised or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext the present Covenant does not recognise such rights or that it recognise them to a lesser extent.

<sup>181</sup> Article 23 of ICCPR reads as follows:

1. The family is the natural and Fundamental group unit of society and is entitled to protection by society and the state.
2. The right of men and women of marriageable age to marry and to found a family shall be recognised.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. State parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

<sup>182</sup> Article 26 of ICCPR is as follows: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection on any ground such as race, color sex, language, political or other opinion, national or social origin, property, birth or other status.

<sup>183</sup> Article 7(a) of ICESCR provides: Remuneration which provides all workers, as a minimum, with :  
(i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;  
(ii) a decent living for themselves and their families in accordance with the provisions of the present covenant;

<sup>184</sup> Article 12 of ICESCR provides :

1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

recognises the right of everyone to education for full development of human personality and strengthening the respect for human rights and Fundamental freedoms.<sup>185</sup>

It also recognises free primary education as compulsion to achieve the full realization of the right. Secondary education in its different forms, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education. Higher education shall be made equally accessible to all and Fundamental education shall be encouraged as far as possible for those persons who have not received or completed the whole period of education.<sup>186</sup>

### **(iii) U.N. Declaration on Elimination of Discrimination of Women, 1967**

The General Assembly Considers that the peoples of the United Nations have in the charter reaffirmed their faith in Fundamental Human Rights, in the dignity and the worth of the human beings and in the equal rights of men and women. The Universal Declaration of Human Rights have adopted the principle of Non-discrimination and adds that all human beings whether be male or female are born free and equal in dignity and rights. Through the charter of the United Nations are

- 
2. the steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for
- (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) the improvement of all aspects of environmental and industrial hygiene;
  - (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness;

<sup>185</sup> *Article 13(1) of ICESCR reads as follows:*

The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and Fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

<sup>186</sup> *Article 13(2) of ICESCR reads as follows: The State Parties to the present Covenant recognise that, with a view to achieving the full realization of this right:*

- (a) Primary education shall be compulsory and available free to all; Secondary education in its different forms, including technical and vocational secondary Education, shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education;
- (b) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate by the progressive introduction of free education;
- (c) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not receive or completed the whole period of their primary education.
- (d) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

concerned with the nondiscrimination between men and women, there continues to exist considerable discrimination against women.

Women have contributed a large to the family as well to the society. She has contributed in social, political, economic and cultural life and the part they play in the family and particularly in the rearing of children. In order to maintain peace and harmony for the development of the country, there requires the maximum participation of women as well as men in all fields. Therefore, it is necessary to ensure the Universal Recognition in law and fact of the principle of equality of men and women. Discrimination against women, denying or limiting as it does their equality or rights with men, is Fundamentally unjust and constitutes an offence against human dignity.

United Nation declaration on elimination of discrimination of women 1967 provides for elimination of discrimination against women to establish adequate legal protection for equal rights of men and women.<sup>187</sup> It ensures women on equal terms with men, without any discrimination.<sup>188</sup> All appropriate and legislative measures shall be taken to ensure married or unmarried women, equal rights with men in the field of Civil Law and Legal capacity.<sup>189</sup> It even provides for the equality in education

---

<sup>187</sup> *Article 2* provides that, all appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

- (a) the principle of equality of rights shall be embodied in the Constitution or otherwise guaranteed by law;
- (b) The international instruments of the United Nations and the specialised agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

<sup>188</sup> *Article 4* provides that, all appropriate measures shall be taken to ensure women on equal terms with men, without any discrimination

- (a) The right to vote in all elections and be eligible for election to all publicly elected bodies.
- (b) The right to vote in all public referenda;
- (c) The right to hold public office and to exercise all public functions. Such rights shall be guaranteed by legislation.

<sup>189</sup> *Article 6* of UNDEDW provides that:

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:
  - (a) The right to equality in legal capacity and the exercise thereof;
  - (b) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;
  - (c) The same rights as men with regard to the law on the movement of persons.
2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:
  - (a) Women shall have the right as men to free choice of a spouse and to enter into marriage only with their free and full consent;

with men in all levels,<sup>190</sup> and ensures elimination of discrimination against women in the field of economic and social life.<sup>191</sup>

#### **(iv) Convention on the Elimination of all Forms of Discrimination Against Women, 1979**

The United Nations Declaration for Women (1975-85) was seen as a watershed in placing women's concerns on the international agenda and for facilitating women's co-operation. Women participated in the Non Governmental Organization Forums, etc. (like in the Beijing World Conference 1995) where women from different countries were "able to exchange strategies and develop ongoing working relationships". The Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter described as CEDAW] was one of the most outstanding outcomes of the decade and has subsequently become the international standard for the protection and promotion of women's human rights. It

---

(b) Women shall have equal rights with men during marriage and its dissolution. In all cases the interest of the children shall be paramount;

(c) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount;

3 Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

<sup>190</sup> Article 9 provides that, all appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels, and in particular:

(A) Equal conditions of access to, and study in educational institutions of all types, including universities and vocational, technical and professional schools;

(B) The same choice of curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality, whether the institutions are co-educational or not;

(c) Equal opportunities to benefit from scholarships and other study grants;

(d) Equal opportunities for access to programmes of continuing education, including adult literacy programmes;

(e) Access to educational information to help in ensuring the health and well being of families;

<sup>191</sup> Article 10 ensures:

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

(a) The rights, without discrimination on grounds of marital status or any other ground, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;

(b) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;

(c) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;

(d) The right to receive family allowance on equal terms with men.

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child-care facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

sets out the duties that the states are required to promote in all areas of a women's life, living and livelihood. The signatories to this "human rights charter" are required to "take all the necessary, legislative, judicial, administrative or other appropriate measures to guarantee women the exercise and enjoyment of human rights and Fundamental freedoms on the basis of equality with men."

CEDAW provides for elimination of discrimination against women in the field of employment in order to ensure equality of women with men. It ensures equal right to remuneration and equality of treatment in the evaluation of equality of work. It also provides for protection of health and safe working conditions including the safeguarding of the function of reproduction.<sup>192</sup>

It provides for maternity leave with pay without loss of former employment, seniority or social allowances. It prohibits dismissal on the grounds of pregnancy and special protection is explicitly provided to women during their pregnancy.<sup>193</sup>

The Government of India has ratified the recommendation of CEDAW and the relevant Article 11 "Equality in Employment" can be seriously taken when women

---

<sup>192</sup> Article 11(1) of CEDAW provides:

- i. State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - (a) The right to work as an inalienable right of all human beings;
  - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.
  - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
  - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.
  - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
  - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

<sup>193</sup> Article 11(2) of CEDAW provides: In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

are subjected to gender specific violence such as sexual harassment. In a landmark Judgment in *Visakha v. State of Rajasthan*<sup>194</sup>, the Apex Court construed domestic law regarding sexual harassment at work place in the light of CEDAW and held that any victim of sexual harassment can directly move to the Supreme Court by filing a writ under Article 32 of the Constitution.

The human rights of women, including girl child are inalienable, integral and an indivisible part of universal human rights. The full development of personality and Fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth-cultural, social and economical. All forms of discrimination on grounds of gender is violative of Fundamental freedoms and human rights. CEDAW reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.<sup>195</sup>

CEDAW also provides for elimination of discrimination against women in all matters relating to marriage and family relations. It speaks for equal rights of women to enter into marriage, to choose a spouse freely with their free and full consent. The women are free to decide the number of children's they want to have. Equal rights and responsibilities regarding guardianship, ward ship and adoption of children were given. However, in all cases interests of the children shall be paramount.<sup>196</sup>

---

<sup>194</sup> AIR 1997 SC 3011.

<sup>195</sup> Article 3 of CEDAW provides: States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and Fundamental freedoms on a basis of equality with men.

<sup>196</sup> Article 16 of CEDAW provides:

1. State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.
  - (a) The same right to enter into marriage;
  - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - (c) The same rights and responsibilities during marriage and its dissolution;
  - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

It may be seen that gender based violence and discrimination, is the primary reason why the need for special human rights charter for women was so anxiously felt. Ironically but, there has been a rise, in geometrical proportions, in all kinds of inhumanity against women and girl children ever since UDHR and CEDAW were declared and ratified. However, in the context of CEDAW, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels<sup>197</sup> is recognized. Surprisingly, "family planning services" are recommended for women, but not family planning "choices" which means full reproductive choices and complete, uninterfered control over her reproductive system. Actually CEDAW overlooked the vital factor of women's human right that is her body is the sole owner of the reproductive system and therefore, woman and woman only should be the sole-decision makers.

#### **(v) Declaration on the Elimination of Violence Against Women, 1993**

"Violence against women" means any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life<sup>198</sup>

Violence against women includes physical, sexual and psychological violence occurring in the family including battering, sexual abuse of female children in the house hold, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to woman.<sup>199</sup>

It is also specified in this declaration that women are entitled to the equal enjoyment and protection of all human rights which includes right to life and liberty

- 
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
  - (f) The same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children of similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
  - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
  - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age of marriage and to make the registration of marriage in an official registry.

<sup>197</sup> Article 14, CEDAW.

<sup>198</sup> Article 1, Declaration on the Elimination of Violence Against Women, 1993.

<sup>199</sup> Article 2, Declaration on the Elimination of Violence Against Women, 1993.

and security of person and also right to equality. In *Chairman, Railway Board v. Chandrima Das*<sup>200</sup> the Supreme Court had shown its respect to this International Covenant and interpreted human rights of a woman against sexual violence in the light the above and gave effective implementation of those rights.

---

<sup>200</sup> AIR 2000 SC 988. See also *Vishaka v State of Rajasthan* AIR 1997 SC 3011, *Rupendeol Bajaj v Kunwar Pat Singh Gill*, 1996 Cri. LJ 381.