

SYLLABUS

No	Topic
1	Social and legal inequality
2	Social reform movement in India
3	Gandhian movement
4	Nehru's view on joint family
5	Karachi congress
6	Equality of sexes

1	Preamble of the constitution- Equality provision in FR and DPSP
2	Negative aspects of Article 23- exploitation of Sex is not mention in Article 23
3	Different personal law- unequal position of women
4	Uniform Civil Code towards gender justice
5	Indian tradition and family ideology: feminism and schools of feminism.

1	Inheritance in Hindu law
2	Inheritance in Christian law
3	Inheritance in Parsi law
4	Inheritance in Muslim law
5	Movement towards uniform civil code (refer to unit 2 topic 4)

1	Matrimonial property
2	Separation of property
3	Maintenance of different type of property
4	Division of assets on divorce

1	Maternity benefits act
2	Equal remuneration Act
3	Factories act
4	Inequality in the work place
5	Additional burden of domestic responsibilities

UNIT 1

1. SOCIAL AND LEGAL INEQUALITY

Introduction

Man and woman are both equal and both play a vital role in the creation and development of their families in a particular and the society in general. Indeed, the struggle for legal equality has been one of the major concerns of the women's movement all over the world. In India, since long back, women were considered as an oppressed section of the society and they were neglected for centuries. During the national struggle for independence, Gandhi gave a call of emancipation of women. He wrote –: "I am uncompromising in the matter of women's rights. The difference in sex and physical form denotes no difference in status. Woman is the complement of man, and not inferior". Thus, the first task in post-independent India was to provide a constitution to the people, which would not make any distinctions on the basis of sex. The preamble of constitution promises to secure to all its citizens- "Justice- economical, social, and political" Every problem has its own solution somewhere. In lieu of this gender inequality, the simplest solution lies at certain changes that can and should be made at the District level mechanism. A clearly demarcated administrative functionary should head the district level machinery that has the responsibilities to monitor and review the incidence of inequality against women. This district level machinery under the guidance of District Magistrate should comprise of police officials, representatives of prosecution machinery, judiciary and prominent individuals of Women's organizations in the district. This committee should review progress of investigation and prosecution. At least one special cell should be created at the district level for ensuring better registration and progress of investigation and monitoring of crime against gender inequality. This special cell should network with community groups and women's organization and help to create an atmosphere in which people should feel encouraged to freely report the cases of gender injustice. At present the most non-reporting of the cases is due to lack of confidence in enforcement machinery.

In India, since long, women were considered as an oppressed section of the society and they were neglected for centuries. During national struggle for independence, Mahatma Gandhi gave a call of emancipation of women. Men and women are both equal and both play vital role in the creation and development of their families in particular and society in general. Indeed the struggle for legal equality has been one of the major concerns of the women's movement. Thus the first task in post independent India was to provide a constitution to the people, which would not make any distinction on the basis of sex. The preamble of the constitution promises to secure to all citizens Justice- social, economical and political. It is really important to note that though the constitution of India is working since more than sixty years, the raising status of women to one of equality, freedom and dignity is still a question mark. Talking of any religious community, be it Hindu, Muslim, Christianity or Parsi, each have their personal laws and all such laws reflect that the women in these communities have fewer rights than those corresponding to their counterparts in the same situations. This is nothing but "Gender Inequality". As a concept, "gender inequality" refers to the obvious or hidden disparities among individuals based on the performance of the gender. This problem in simple terms is known as Gender Biasness, which means gender stratification or making difference between a male and a female. India stands at 10th position among 128 countries all over the world, in gender biasness. This is indeed shameful for us. Gender inequality is not one homogenous phenomenon, but a collection of disparate and interlinked problems. The issue of gender inequality is one of which has been publicly reverberating through society for decades. The problems of inequality in employment being one of the most pressing issues of today.

Position of Women in the Indian Civilization

The position of women is covered under the following chapters and periods.

2500 to 1500 BC

The frequent reference to unmarried girls speaks in favor of a custom of girls marrying long after they had reached puberty. Among Aryans, marriage among brothers and sisters was prohibited. There seems to have been considerable freedom on the part of young persons in the selection of their life partners as they generally married at a mature age. Approval of the parent or the brother was not essential, the boy and the girl made up their minds and then informed the elders though their participation in the marriage ceremony was essential i.e. the blessings of the elders were sought.

Surprising as it may sound, in some cases a bride-price was paid by a not very desirable son in law. So also when a girl had some defect, dowry was given. A hymn in the Rig Veda gives us an idea of the old marriage ritual. The boy and his party went to the girl's house where a well-dressed girl was ready. The boy catches the hand of the girl and leads her round the fire. These two acts constitute the essence of marriage. The boy takes the girl home in a procession followed by consummation of the marriage.

The wife was respected in her new house and wielded authority over her husband's family. The wife participated in the sacrificial offerings of her husband. Abundance of sons was prayed for so, naturally so in a patriarchal society since the son performed the last rites and continued the line.

Remarriage of widows was permitted under certain conditions. Female morality maintained a high standard although but the same degree of fidelity was not expected from the husband.

Net Net women enjoyed much freedom. They took an active part in agriculture, manufacture of bows. They moved around freely, publicly attended feasts and dances.

1500-600 BC

The age of the Atharva, Sama and Yajur Vedas - Freedom of marriage continued and remarriage of widows continued to be allowed. The sale of a daughter was known but viewed with extreme disfavor. Dowries continued to be given but not in the sense that we understand today. The marriage ceremony was the same as in the previous period except that the girl had to mount a stone before the boy caught her hand. As in the previous period the picture of an ideal family life continued.

Gradually religious ceremonies increasingly were conducted by the priests resulting in losing her preeminent position in the household. This was the period during which the importance of rituals increased and so did the importance of the Brahmins.

Desire for sons continued, sati was not prevalent. Net net, the position of women was not as high as it was in the Rig Vedic period. Female workers were involved in dying, embroidery and basket making.

The Grihya-sutras give detailed rules regarding the proper seasons for marriage, qualifications of bride and bridegroom. The various stages of a marriage ceremony are:

The wooers formally go to the girl's house. When the bride's father gives his formal consent, the bridegroom performs a sacrifice. Early in the morning of the first day of marriage celebrations, the bride is bathed.

The Kanya-pradana, formal giving away of the bride takes place now followed by.

- The clasping of the bride's right hand by the bridegroom's own right hand takes place now. The treading on stone.
- The leading of the bride round the fire by the bridegroom. The sacrifice of the fried grains.
- The Saptapadi i.e. the couple walking seven steps together as a symbol of their lifelong concord.
- Finally, the bride is taken to her new house.

- After the bride came home, the couple is expected to observe celibacy for three days after which the marriage was consummated. The logic was to emphasize at the outset that self-control was very much part of married life.
- The bride is at a mature age, over 15 or 16. The elaborate rites indicate that marriage was a holy bond and not a contract.
The Mahabharat and Buddhist thinkers concur with this view.

600 BC to 320 AD

Marriage between the same caste was preferred although inter caste marriages were prevalent. Of the eight forms of marriage prescribed by the Dharma-sutras, the Arhsa form of marriage was most popular which was the father gave his daughter after receiving from the bridegroom a cow and a bull or two pairs. The bridegroom was selected by the girl's father or guardian. According to Nearchus the Indians "marry without giving or taking dowries but the girls, as soon as they are marriageable, are brought forward by their fathers and exposed in public, to be selected by a person who excels in some form of physical exercise". This indicates a modified form of Svayamvara.

While girls continued to be married around 16, there was a tendency to marry them before they attained puberty. It was probably due to the anxiety to maintain their body purity. Lowering of the marriage age affected their education and culture adversely. After all, if she got married early then how could she study? Extreme emphasis was now laid on the physical chastity of women which discouraged widow remarriage, divorce and encouragement of sati. We must remember that India faced its first foreign invasion ie Greeks during this period.

During the earlier part of this period, there were highly educated women holding an honorable position in society and household. There were lifelong students of sacred texts or those who pursued their study till marriage. Women also recd training in arts, music, painting and for some military training also. Female bodyguards are referred to in Kautilya's Arthashastra. Buddhist and Jain nuns renounced the world for the sake of spiritual salvation. Jain texts refer to Jayanti who carried on discussions with Mahavira himself and later on became a nun.

320 to 750 A D

Position of women

Marriage – there was a growing tendency to lower the marriageable age of girls with girls being married before or after puberty. Marriage within the same caste was preferred but prohibited within certain degrees of relationship.

Education - Girls of high families had adequate opportunities for acquiring proficiency in higher learning.

The Widow – in the Gupta period lived the chaste and austere life prescribed by the Smritis. Sati was extolled by some but strongly disapproved by others.

750 to 1000 AD

Marriage – The Smriti authorities of this period treat earlier marriage rules with some modifications. Medhatithi made inter-caste marriages exceptional. Marriage with the daughter of a maternal uncle is condemned. Marriage by mutual love is condemned by Medhatithi and he said that one should marry a girl who is much younger than himself, she must get married between the age of eight and achieving puberty.

If a girl's guardian cannot find her a match before she becomes of marriageable age, then she can choose her partner after staying in her father's house for three years after attaining puberty. While love

marriages were known they were solemnized after approval of the girl's guardians. Sometimes, girls with the approval of their parents opted for a Svayamvara ceremony.

Education – Due to a reduction in the marriage age, the education levels among women dropped drastically although some women of all classes had an opportunity for liberal education, fine arts.

Remarriage - While Agni Purana, Visvarupa permits a woman to take a second husband under five circumstances, lost, dead, impotent, and outcaste or adopted the life of a recluse.

Widow – As in the previous period, the life of strict celibacy and self-restraint enjoined upon her was sought to be enforced during the period.

Sati – The rite of sati was enjoined by some authorities but condemned by others but the custom was mainly confined to royal families.

Purdah - was not prevalent during this period.

1300 to 1526 A.D.

Slavery - Slavery was quite common and Iv Batutah refers to the acquisition of slave girls in lots and their distribution as gifts. Sadly, a sort of communal spirit seems to have prevailed in the matter. The Muslims took pleasure in enslaving Hindu women enmass. Muhammad Bin Tughlaq sent as presents to the Chinese emperor 100000 male slaves and 100000 slave dancers from among the Indian infidels. On the other hand Muslim women were turned by the Rajputs into slave girls and taught the art of dancing.

Marriage - Girls continued to get married early except those from Kshatriya families who got married around 14 or 15. Marriages within the same caste became more common although upper caste did marry more than once, once within their own caste and second time outside their caste. As in the earlier period marriage within the same gotra was forbidden and girls were given away in marriage before the age of puberty.

Widow Remarriage was forbidden during this period.

Sati - was more prevalent during this period than in earlier periods.

Purdah – The purdah had become a common practice during this period but was unknown among lower classes of society, especially in the rural areas

1526-1707 AD

Divorce and remarriages common among **Muslims** was prohibited to Hindu women. Widow Remarriage, except for the lower strata of society, had completely disappeared in Hindu society during this period.

A Muslim woman inherited a definite share of her husband's or father's share of property with an absolute right to dispose it. Unlike her Hindu sister she retained the right after marriage. Mahr was another safeguard for her while a Hindu woman had no right to the property of her husband's parents. A Hindu woman was entitled to maintenance besides movable property. Thus, women were led to a position of despondency in every sphere of life. They became home birds, period.

1707 to 1818 A D

Marriage – was a universal social practice except on the part of those who observed celibacy on religious grounds. To arrange for marriage of their children was considered to be the parent's duty. Marriage was an indissoluble and sacred bond and not a contract for materialistic comforts. A duly married wife could not be discarded except on charges of adultery. Although took place at an early age, consummation did not take place till they attained maturity.

Purdah – was observed in Hindu and Muslim families.

Sati – It was more widely prevalent in Rajasthan and Central India with hardly any followers in the South. In Bengal Sati was not universally followed by all castes.

Education – Since most girls got married early, they did not have the benefits of education.

Polygamy – There was ordinarily no polygamy amongst the common man except the Rajahs, Princes others. But polygamy had become a notorious practice among the Kulins of Bengal and the Brahmins of Mithila. Raja Ram Mohan Roy protested vehemently against this custom.

Widow Remarriage in high caste Hindu families was not permissible in Bengal.

1818 to 1905 AD

An important reason for the decadence of Indian society was the gradual but steady deterioration in the position of women. The reason why the attention of English educated Indians was first drawn to the necessity of reform in the status of women is that it affected their own kin whose miseries stirred their emotions. Inspire of the good words said by European scholars about the condition of women in the previous period, on an average, their condition was deplorable. Child marriage, lack of education, no widow remarriage, and sati were some of the problems that she faced. Their condition in Bengal particularly was pitiable. In Mumbai, the agitation for social reforms started earlier than West Bengal due to the fact that the Maratha rulers of the 18th century followed the old Hindu tradition of regulating social affairs and showed a spirit of readmitting converts, intermarriage, remarriage of girls, and prohibition of sale of girls. The establishment of the Prarthana Samaj gave a great impetus to social reform. Jotiba Phule took up the cause of women and started a girl's school in Pune in 1851, helped widows to remarry. The spirit of social reform was evident in most provinces. The Mysore govt passed a law making marriage before the age of 12 illegal for girls. Baroda fixed the minimum age for girls at 12 and 16 for boys. The system of Devadasis was declining.

Sati was abolished in 1829.

Education – Although the preceding paras refer to the high educational attainment of women in the Vedic ages and its gradual decline, things had come to such a pass during the 19th century that a regular system of female education was unknown in India.

1905 to 1947 AD

Education – Women's education made steady progress. The number of female students at each stage increased rapidly. Obstacles like early marriage and orthodoxy were gradually being removed. A new feature introduced during this period was co-education. Divergent views were expressed on the benefits of this policy.

The Child Marriages Prevention Act became effective in 1930, became applicable to all communities, and penalized marriage if the girl was below 14 yrs and boy 18 yrs of age.

Attempts to have a civil marriage law validate inter caste marriage failed. In 1939, the Indian Legislature passed the Hindu Women's Right to Property Act, which conceded to the Hindu widow a share in her husband's property and the right to demand partition.

Devadasi system.

Widows – Although the Act of 1956 accorded legal sanction to widow remarriage, it was not easy to break centuries of orthodoxy. Measures were taken to improve their lot. Widow's homes were founded throughout the country; the most prominent one's being the Widow's Home in Mysore, Bangalore, and Mahila Silpasrama in Calcutta amongst others. The Arya Samaj opened homes in Jullundar and the Jains at Bombay. We cannot forget the pioneering efforts of Prof. D.K. Karve who founded a widow's home in Pune to which he added a High School for girls and social service center.

2. Social Reform Movement In India

WOMEN AND RELIGION

Women's reforms in British India were the outcome of the commendable role played by various reformers who took up the cause of women's oppression with passion. They did commendable job of taking up the cause of women's freedom from traditional modes of bondage. Indian society at the time was a completely oppressive one as far as women were concerned. There were myriad issues faced by Indian women for centuries and they served to keep the women in a submissive role. Various outdated and harmful practices such as child marriage, Sati female infanticide, polygamy, lack of women's education and many more such evils were rampant in society and required an urgent redressal. It was with an aim of resolving these various issues that the campaign for reforms was undertaken. The various issues that were sought to be reformed covered the entire gamut of social evils that women were subject to. Issues like child marriage as well as raising the marriageable age of women, widow remarriage, women's education and Sati were some of the burning issues that were taken up at the time. A major surge in reform activities came about with the coming of the British in India as they were able to provide a boost to the works of the Indian reformers who were championing women's cause.

Reforms regarding women the Century. in 19

Reform regarding Women. The conditions of women at the beginning of 19th century were miserable. They did not get equal treatment. They were denied Education. Female Infanticide, Child Marriages, Dowry System, Sati, Tonsure. The movement for reforms regarding women addressed these issues.

Q: What was sati and what does it means?

- Ans: The term sati literally means a 'pure and virtuous woman'. It was applied in case of a devoted wife who contemplated perpetual and uninterrupted conjugal union with her husband life after life and as proof thereof burnt herself with the dead body of her husband.
- Enlightened Indian reformers led by Ram Mohan Roy launched a frontal attack on the evil of sati. With an eye, to the coming Charter debates in the British Parliament and anxious to get a renewal of its charter for another 20 years by presenting a creditable image of its activities in India, the Court of Directors encouraged William Bentinck to enact legislation to suppress sati.
- However, this act was not applicable to Hindus, Muslims and other recognized faiths and as such had very limited impact on Indian society. B.M. Malabari, a Parsi reformer of the 19th century, started a crusade against child marriage and his efforts were crowned by the enactment of the of Consent Act which forbade the marriages of girls below the age of Sharda Act further pushed up marriage age and provided for penal action of boys under 18 and girls under 14 years of age. An improvement Was made by the Child Marriage Restraint Act, 1928 which raised the age of presage for girls from 15 to 18 years and for boys 18 to 21.
- The British first discovered female infanticide in India in 1789. Jonathan Duncan, then the resident in Benares province was asked by the Bengal council to settle the revenues in the province acquired by the raja of Benares. Duncan found during his tour for settling the revenues, that the Raj Kumar rajputs in Jaunpur district destroyed their female children. Duncan immediately informed Lord Cornwallis the then governor-general of British Indian about his discovery. A few years later in 1794. Sir John Shore informed the Asiatic Society of Bengal of Duncan's discovery. In 1795, Duncan was appointed governor of Bombay. He visited Surat in 1800 and was informed during his visit by a minister of the Nawab of Surat that the Jadeja rajputs of peninsular Gujarat in Kathiawad (now Saurashtra) and Kutch killed their female children
- Thereafter, the British discovered female infanticide in various parts of north and west India. The castes, which resorted to the practice in the 19th century, according to reports of British officials, included: rajputs, jats, ahirs, gujars, khutris and moyal Brahmins in north India. In western India, the only other caste besides the rajputs of peninsular Gujarat who practiced

female infanticide according to the information in the records, were the lewa patidars and kanbis of mainland Gujarat. These castes were dominant at the local level in different parts of north and west India

- Child Marriage Child marriage is defined as a formal marriage or informal union before age 18. While child marriage is observed for both boys and girls, disproportionately most affected worldwide are girls. It is related to child betrothal and unmarried teenage pregnancy. In some cases only one marriage-partner is a child, usually the female, due to importance placed upon female virginity. Other causes of child marriage include poverty, bride price, laws that allow child marriages, religious and social pressures, regional customs, and perceived inability of women to work for money.
- Causes Of Child Marriage • Dowry. • Persecution, forced migration, and slavery. • Fear and social pressures. • Religion, civil law and child marriage. • Politics and financial relationships.
- The Child Marriage Restraint Act, 1929 was passed during the tenure of British rule on prepartition India. It forbade the marriage of a male younger than twenty-one or a female younger than eighteen. A marriage fell under the scope of this Act if either of the contracting parties met the established criterion of a child. South Asia has the highest prevalence of child marriage of any region in the world.
- Others were Malabari, Ranade → Veerasalingam Pantulu in madras made effort in this direction → D.K Karve in western India, opened widows home in poona, set up women university in Bombay in 1916, himself married widow → Vishnu Shastri Pandit founded widow remarriage association 1850 → Ishwar Chandra Vidyasagar principle Sanskrit college Calcutta ... Hindu widow remarriage act 1856 → Woman emancipation • Abolition of "Sati" through regulation of 1829 Raja Rammohan Roy • Widow Remarriage
- Woman education • 1819 Calcutta female juvenile society set up by Christian society • 1849 Bethune school Calcutta by Bethune 1st fruit of the movement for woman education • 1854 Wood's Dispatch on education laid emphasis on woman education • 1916 Woman university Bombay Karve • 1916 Lady Hardinge Medical college Delhi
- Caste based exploitation • Brahmo samaj, prathna samaj, Arya samaj, Ramakrishna Mission, Theosophist worked against it Though defended chaturvarna system • Principle of liberty & equality basis for freedom movt. to unify the society • INC govt. in 1937 did useful work for upliftment of depressed • Gandhiji in 1932 founded All India Harijan Sangh
- Lord Hardinge II (1910-1916) • 1911 ... Creation of Bengal presidency like Bombay & Madras • 1911 Transfer of capital from Calcutta to Delhi • 1911 ... Coronation durbar of King George V in Delhi • 1915 "Hindu Mahasabha" by Madan Mohan Malviya
- Raja Rammohan Roy • Father of Indian Renaissance • Set up Brahmo Samaj 1828 earliest reform movement • Wrote Gift to Monotheism, preached monotheism • Translated to Bengali the Vedas & five Upanishads • 1814.. Set up Atmiya Sabha in Calcutta • Focused on rationality & reasons in Vedanta • 1820 wrote Precepts of Jesus • Sati was declared crime through Govt regulations • Supported David Hare to set up Hindu college 1817
- Brahmo Samaj • Followers of Brahmo samaj were Keshab Chandra sen, Debendra nath tagore, Ishwar Chandra Vidyasagar, Ashwani Kumar datta, Derozians • It denounced polytheism & idol worshipping • Criticized caste system
- Henry Vivian Derozian • Led Young Bengal Movement • Teacher in Hindu college Calcutta 1826-31 • Inspired by French revolution • Had radical thoughts of liberty & freedom
- Jyotiba Phule • Was against upper class Brahminical domination • In 1873 founded Satya Shodhak samaj • Wrote Gulamgiri & Sarvajanic Satyadharma.

3. Gandhian Movement

Gandhi opposed practices which were injurious to women and girls even if such practices had the sanction of Dharma Shasta, law and tradition.

(1) Female infanticide: He was against the practice of female infanticide. He discovered that the birth of a girl was generally unwelcome as she was to be married off and had to live and work in her marital home. Another reason was the custom of dowry which made the girl child liability for her parents.¹ Gandhi was clearly of the view that people should rejoice at the birth of boy as well as girl as the world needs both. People should make no distinction between a son and a daughter and both should be welcomed alike. He also opposed the custom of dowry which was one of the reasons behind female infanticide.

(2) Female illiteracy: Gandhi believed that lack of education and information was the roots cause of all the evils against women. He believed that education is therefore necessary for women as it is for men. He believed that education is essential for enabling women to assert their natural right, to exercise them wisely and to work for their expansion. He thought that low level of literacy among women had deprived them of socio- politico power and also the power of knowledge. He stood for proper education for women as he believed that after receiving education they become sensitive to the glaring inequalities to which they are subjected.

(3) Child marriage: Gandhi objected to child marriages, for they were devoid of the element of consent on the part of the concerned boy as well as the girl. He believed that both the boy and the girl should be developed physically and mentally at the time of marriage and that they should have a voice in the choice of their life partner. He looked at the practice of child marriage as a moral and physical evil. Child marriage to him was an immoral inhuman act which made innocent girls objects of man's lust; ruined the health of many a child mother and converted tender age girls into widows. He also believed that the practice of child marriage came in the way of the progress of women. They were married off and expected to bear and rear children at an age in which they themselves should be in schools. He said women cannot make any progress so long as there are child marriages, as it results in denial of educational opportunities and deprivation of joys of girlhood. Moreover it causes physical, mental and emotional cruelty as girls are rushed into adulthood prematurely and made subservient to their husbands. He advocated mobilization of strong public opinion and supported agitations by the local people against such happenings. He fully supported the child marriage restraint bill.

(4) Dowry: Gandhi believed that the custom of dowry turned young girls into mere chattels to be bought and sold. He called this custom pernicious as it lowered the status of women; destroyed their sense of equality with men and defiled the institution of marriage. To curb the venomous dowry system he advised every parent to educate their daughters so that they refuse to marry a young man who wanted a price for marrying and would remain spinster than to be party to the degrading terms. He suggested that a strong public opinion needs to be formulated against dowry and such young men who soil their fingers with such ill gotten gold should be excommunicated from society. He advocated change in education and also stressed the need of taking recourse to radical measure like organizing youth movements and offering satyagraha against those perpetuating the custom.

(5) Purdah (Veil): Gandhi regarded purdah as inhuman and immoral, for it impeded the march towards Swaraj (self rule) by restricting women. It denied women freedom as well as free gift of God like light and fresh air. It also crippled the free movement of women; interfered with their advancement and their capacity for doing useful work for the society. It weakened instead of strengthening morality for it did not help in preserving chastity as chastity is not a hot- house growth and cannot be superimposed. It cannot be protected by the surrounding wall of purdah. It must grow from within and must be capable of withstanding every temptation. Men must be able to trust womenfolk as the later are compelled to trust them. He believed that the veil generates the feeling of insecurity in women and results in deterioration of their health. He appealed to public in general and women in particular to tear down purdah. He was sure that abolition of purdah would lead to mass education for both men and women and would help women in gaining strength and becoming an active participant in the struggle for swaraj.

(6) Pathetic widowhood: Gandhi was deeply concerned about the condition of child widows who were denied the rights to re- marry and also suffered other social and legal disabilities. He advised the parents to see that the child widows are duly and well married- not married for he believed that they

were never really married. Regarding adult widows, he felt that the decision to re marry should rest with the widow, but he was against the wrong done to the widows. He protested against the prevalent belief that a widow crossing one's path is a bad omen. He considered it to be his good fortune to see a widow in the early hours of the day. He regarded her blessing to be a great boon.¹² He regarded enforced widowhood as an unbearable yoke that defiles the home by secret vice and degrades religion. He advised every family to treat widow with utmost respect and to give her facilities to expand her knowledge. The ultimate remedy suggested by Gandhi was to consider the widow and the widower on par so far as re marriage was concerned.

(7) Sati: Gandhi found the roots of the sati custom in the blind egoism of men. He argued that if wife must prove her loyalty and undivided devotion to her husband, then the husband must also prove his allegiance and devotion to his wife. To prove her sati hood or loyalty she must not mount the funeral pyre of her dead husband but prove it through utilization of every opportunity to add to her stock of knowledge and increase her capacity for cultivating renunciation and self discipline. To him sati was a futile exercise as instead of restoring the dead husband to life, it takes away one more life. He believed that sati hood is the acme of purity. As purity cannot be attained or realized by dying but can be attained only through constant striving, constant immolation of spirit from day to day.

(8) Polygamy and subjugation of wives: To Gandhi wife was not the slave of the husband but his comrade, better half, colleague and friend. The wife is a co-sharer of husband with equal rights and duties. Their obligation towards each other and towards the world must therefore be same and reciprocal. He believed that a wife is not bound to be an accomplice in her husband's crimes and when she holds anything to be wrong she must dare to do the right. If a husband is unjust to his wife, she has the right to live separately. Married life, he believed, is intended to promote mutual good here and hereafter. It is meant to serve humanity. When one partner breaks the law of discipline, the right accrues to the other of breaking the bond. The wife or the husband may separate to serve the end for which they had united.

(9) Molestation: He wanted girls to learn the art of protecting themselves against indecent behaviour youth. If a woman is assaulted she should not stop to think in terms of ahimsa (non violence) as her primary duty is self protection. She is at liberty to employ every method or means that comes to her mind in order to defend herself with all her strength and if need be die in the effort.

(10) Prostitution: He regarded prostitution as a social disease or moral leprosy promoted by men who lack morality. He felt it to be a matter of bitter shame, sorrow and humiliation that a number of women have to sell their chastity for men's lust. He denounced prostitution as well as cabaret but realized that men were responsible for driving women into flesh trade. He advised women to give up this profession and take up living by spinning khadi. He believed that such women can be rehabilitated by getting social acceptance by involvement in a noble cause and by extending opportunities of education and employment.

Support to Empowerment of Women

Gandhi did not stop at opposing the practices which were harmful to women but also forcefully advocated in favour of various rights of women.

(1) Education: He believed that education was needed to awaken in the minds of women a consciousness of their present condition. He believed that education will enable women to assert their natural right and to exercise them wisely and to work for their expansion. However he also believed the since home life is entirely the sphere of women, they ought to have knowledge regarding domestic affairs and upbringing of children. Hence courses of instruction should be based on an appreciation of basic roles of men and women.

(2) Property: Gandhi realised that property laws in British India were against women. However he felt that married women are co-sharer in their husband's power and privileges in spite of the law being against them. He also emphasized on character and education as the real property that parents can transmit equally to their children.

(3) Economic independence: He was not against economic independence of women. Some people feared that economic independence of women may lead to spread of immorality among them and disrupt domestic life. To that his answer was that morality should not depend upon the helplessness of a man or woman. It should be rooted in the purity of hearts. Although he wanted women to take up some work so as to supplement the earning of the family. He recommended work like spinning which will not disturb the home as he regarded their duties at home to be as important as men's duty to earn. He recommended equal payment to women.

(4) Franchise: He wanted women to have voting right and equal status as men.

(5) No legal bar: He did not want women to be restricted from any activity and went on to say that there may be no legal bar against a woman hunting or wielding a lance.

(6) Equal treatment to daughter: He believed that as both men and women are necessary for the world, the parents should treat their sons and daughters as equal and rejoice at the birth of both.

(7) Wives as equal to husband: He wanted every husband to treat his wife as an 'ardhangini' and 'sahdharmini'. The wife is a comrade with same freedom which the husband sees for himself. She should have the right to participate in the very minutest details in the activities of men.

(8) Women as equal to men: He believed that men and women are equal as the same atma (soul) dwells in the women's body. Since soul is sexless men and women are perfectly equal in the eyes of God. He recommended equal remuneration for women. He believed that women have equal mental capacities; have the right to participate in the minutest details of the activities of men; and have same right to freedom and liberty as men.

(9) Women as individuals: He asked women to cease to consider themselves the object of men's lust. They should stop adoring themselves to please their husbands and others. He believed it will save women from subordination of men and wives would be saved from beating by their husbands. He thought jewellery to be a source of subordination as well as intimidation. He believed that women of India had strength, ability, character and determination to stand on her own and work shoulder to shoulder with men in every walk of life. He had full faith in their sincerity and was sure that they would not lag behind in producing perfect performance.

(10) Women in economic sphere: He believed that the loss of spinning wheel brought about India's slavery and its voluntary revival will lead to freedom. In his view women were best suited to take up spinning and the propagation of khadi and swadeshi. To him for middle class it should supplement the income and for very poor women it could be the means of livelihood. He believed that it would mean a few coppers in hand where none existed before. Besides it will bring about metamorphosis in the lives of women.

(11) Women in political arena: He called upon women to join Indian National Congress and participate in the freedom struggle. There was a breath-taking abruptness about the entry of women into political life due to his influence. One moment they were not there, the next they were in the fore front of the scene. Women participated in political meetings and protest marches; bore lathi charge; courted arrest and even got shot. They could do so because Gandhi choose a particular form of struggle which suited women. Women did not feel limited or unequal to men. He mobilized women politically through his speeches, writings and personal example. Due to him women participation in freedom movement the presence of women in public sphere gained acceptability in India. It was made possible because men folk knew that the honour of their women was safe in a non violent struggle guided by Gandhi.

(12) Women in constructive programme: Women were at the forefront of constructive programme. They organised themselves; manufactured contraband salt; sold it from house to house; picketed wine, ganja, opium, toddy and foreign goods shop; spun and wore khadi; participated in prabhat pheries, demonstrations, prayers, meetings, marches; worked for Hindu-Muslim unity; and removal of untouchability. They also provided support to families when men were away.

(13) Awareness of rights: As women got educated and participated in public arena they became aware of their own position and rights. As a result many associations for women came up.

(14) Women as superior to men: Gandhi considered women not only equal to men but in many ways superior to men. To him bravery lay in dying and not killing. He defined bravery in the highest sense of

suffering and sacrifice. Hence to him the courage of self sacrificing women was superior to men of brute force.³⁴ He declared that to call women weaker sex was libel and a gross injustice to women. He believed that strength means moral power hence women are immeasurably superior to men. Even as a general rule he considered that the standards observed by women in their conduct were superior to those of men. He therefore advised the later to copy the former and not vice versa.

(15) Women as Shakti: Gandhi believed that women have been gifted by God but their marvelous power has been lying dormant. If they realize their power they can dazzle the world.

4. Nehru's views – joint family etc.

Nehru too was a protagonist of the idea of the idea of progress and secular one. The Indian social structure was it caste system and joint family were successful in providing social security for the group and the kind of insurance for the individual who by reason of infirmity, age or some incapacity could not provide for himself. Indian social system thus always changed, flexed and adapted new conditions. When we come to analyse their views on sex and family, we find to our surprise Gandhi and Nehru more liberal and Chaudhuri more conservative. Gandhi rejects the concept of inequality of man and woman. For him the human soul (spirit) is the same. The physiological difference between man and woman is complementary to each other and of a functional character. It is not fundamental; therefore, he believes that there is nothing sacrosanct in what³⁵ is said about women being subordinate to men in Smiritis. In this regard, Gandhi is an androfeminist, who advocates the cause of women's uplift even at the cost of his religious faith. He wants to eliminate sex altogether except for the primary purpose of procreation. He is against all social and religious barriers to widow re-marriage. He instills the spirit of nationalism into women which has brought about an awakening in women. Nehru too, maintains and works for the equality of women with men. She has the right to participate in every minute activity of man and she has an equal right for liberty, But, as a secularist, he however cannot understand Gandhi's attitude to sex that any union is a crime when the desire of progeny is absent. He believes that the joint family system suppresses the individuality

and prevents growth, According to Chaudhuri, woman has been the object of special interest and concern in India because of the ambivalent approach of men towards her, Because of the rigid puritanical background, he thinks that there is no inter communication between man and woman. Though, he is sympathetic with the dark young Bengali girls, who are brushed aside because of the 'color-consciousness' of the Bengalis, he considers the emergence of the working woman in India as a great threat to the happiness of family life. He is also against the joint family system and shows how procreation, the primary goal of ancient marriage, has become secondary in modern matrimonial world. Nehru talks ill of the joint family system, which according to him, will soon disappear. It curbs individuality and it has already started losing its hold in many of the educated families of India. The younger members are no longer interested in helping their impoverished relatives. The greatest disadvantage in this type of family system is that it shelters lazy people and make them very inactive Nehru argues that the joint family does not fit in with the modern time and therefore, it will disappear soon: Between these two pulls, the middle pull of the joint family becomes less and less; it comes in the way of the individual life as well as the larger national life. It does not fit in with the thought and elemental forces that move the world today. So, it must fade away, as it is indeed doing As we are deep-rooted in the past, major changes take time, but, it is certain that the end of joint family is near, Dr. Radhakrishnan has rightly said: "Our thoughts today go to Nehru as a great emancipator of the human race, one who had given all his life and energy to, the feeling of men's mind from political bondage, economic slavery, social oppression and cultural stagnationn (cited in Zakaria 1989: 102).The joint family system has been hailed as one of the major factors in the continuance of cultural traditions in India. But, Nehru is frank and straightforward in pointing out that the institution of joint-family is slowly beginning to lose its hold on many of the educated folks in big cities, though the sense of kinship in India is still in general much stronger than in the western world. It is so, because younger members of the family are no longer inclined to contribute to the upkeep of impoverished relations or to carry out the wishes of their elders, especially when they reached maturity. Nehru, however, believes that

the family as a unit is important, especially the smaller family that fulfils a psychological need. The status of women in the joint family is generally very low, since sons are considered as assets and daughters as liabilities and daughters-in-law are supposed to merge their individuality with their husbands. But the greatest disadvantage is that the joint family provides shelter to lazy people and encourages laziness on the part of some members. When a person is in a position to lead comfortable life in a joint family, without exerting himself, he is likely to avoid strenuous activities. Nehru says: There is a feeling that the burden falls on some and not on others, that some are not pulling their weight, that some sow while others reap, and so on. Though, scholars like A.L. Basham believes that "In India as long as there is the traditional ideal which expects sons and grandsons to provide for their elders with necessities of life and to care for them in their old age, the joint family system will continue" (Basham, 1982: 15). Nehru considers that the joint family system will suppress the individual and prevent growth. Like Nehru, Chaudhuri disapproves of the joint family system, which he thinks is still the norm of the family among Indians, in general, today fully convinced that the joint family system must be swept aside, both in theory and practice, Chaudhuri first sets out to prove that there is no historical justification for its continuance. According to him, "there was no time in the history of Hindu society in which the joint family was the sole expression of family life, when its sway was undisputed, or when it was not breaking up, So far, as we know the history of Hindu family, the joint family has been in existence and breaking up simultaneously all the time". He observes that the 'Manu Smriti' does not make any mention of the joint family but refers to the smaller family as the proper unit of the 'Grihashthashrama'. According to Chaudhuri, there is generally more intercommunication between women than between men. The mothers discuss anything and everything before their daughters but the fathers do not do so before their sons. One more peculiarity of the Indian joint family is that the grandchildren are generally closer with the grandparents than with the parents. Thus, the joint family system has more evils and therefore, it is not very surprising when he concludes that "the joint family has outlived whatever usefulness it had, and the sooner it comes to an end the better will it be for everybody concerned" As Verghese comments "Chaudhuri's is a perceptive analysis of the evils of the joint family, both from the historical and the sociological angles"

Merits of the Joint Family:

- **Simple division of labor:**
- Joint family system enjoys all the advantages of a simple division of labor. Here the work is distributed among the members on the basis of age and sex keeping individual ability in view. In an agricultural economy much manpower is needed for sowing, ploughing, harvesting and also protecting crops from heat and wind. The male members are engaged in such work as furrowing, sowing and irrigation.
- Children, old persons and women watch the crops in the field particularly during the harvesting period. In this way, the co-operation of all members helps to save money that would have otherwise been paid to outside labourers. Moreover, every member of the family is ensured of at least some food, clothing and shelter, which are very essential for a healthy and developed economy.
- **Avoids fragmentation of land:**
- So far as the joint family is concerned, the property is held in common. As such it does away with the evils of subdivision and fragmentation of land and promotes scientific farming. It enjoys all the advantages of large scale production.
- **Money saving device:**
- A joint family is advantageous from the economic standpoint. Since things are consumed in a large quantity, they can be procured at a cheap rate. Again so far as accommodation is concerned, the joint family saves money that would have otherwise been paid for establishing separate households. Besides, the family saves considerable amount of money by not employing outside labour.
- **Insurance against odds:**

- Favours the joint family system Pandit Jawaharlal Nehru has remarked that it is an insurance against difficult times. It provides social security to its members, especially to the old, the children, the insane, the widows, the physically handicapped and the helpless.
- Further, the joint family plays an important role in providing much assistance and help at such time as pregnancy, sickness etc. Life of an individual in the joint family is properly looked after right from the cradle to the grave.
- **Satisfaction of basic needs:**
- Food, clothing and shelter are the basic needs of man. The joint family system caters to these basic needs of its members.
- **Provides leisure:**
- So far as joint family system is concerned, work is shared by all the members on the basis of age, sex and experience. Hence they avail ample leisure.
- **Co-operation and economy:**
- The joint family fosters co-operation and economy achieved by few other institutions. Cultural unity and associational feeling are markedly visible among the members.
- **Continuity of culture:**
- In a joint family, the younger members are immensely benefitted by the experiences of elders. The elders also guide the young members in developing joint family sentiment and broad social outlook. All these are potent factors in the continuance of cultural traditions.
- This institution of joint family though of ancient origin has not only survived for its manifold virtues but has stimulated the social life. It has ensured the continuity of rich traditional value and culture.
- **Demerits of the Joint Family:**
- In the present context, the joint family system, for the most part, has lost its effectiveness. Some of its merits have turned out to be dysfunctional in certain respects. The demerits of the joint family system are as follows:
- **Hindrance in the development of personality:**
- One of the ugliest features of the joint family system is that it stands in the way of the development of the personalities of its members. It so happens that the oldest member very often assumes rulership. He, in virtue of his age, tends to look upon all others as mere children. He behaves with them accordingly.
- As a result, the other members, though they are full-blown individuals, fail to develop their personalities in a natural way. They get dwarfed emotionally and intellectually. Furthermore, the youngsters in the joint family do not get enough scope to develop qualities like adventure, initiative, self-determination, industriousness etc.
- **Strife:**
- One word of opposition or of self-assertion with dignity from the daughters-in-law is enough to set the house on fire literally. They are abused and even beaten by their husbands who are provoked to do so by their mothers. Mutual hatred and jealousy among the daughters-in-law leads to enmity among the brothers themselves. There is round-the-clock infighting over the doings of children. Adults are compelled to spend their precious time in the setting of petty quarrels. The house gets divided against itself.
- **Loss of privacy:**
- Privacy is practically absent in a joint family set-up. The newlywed couple hardly avails an opportunity to develop intimacy between them. This lack of privacy naturally leads to frustration and psychological disturbances. Again over crowdedness also has its baneful effects on the development of children.
- **The deplorable condition of women:**
- This is one of the major causes for the disintegration of joint family system. In the joint family, the daughters-in-law do not get any opportunity whatsoever to unfold their potentialities, talents etc. They are expected to serve the whole family like slaves. More often than not, they

cannot afford to look after their own children for fear of censure etc. They can hardly meet their husbands during day time.

- The position is no better at night. The husbands return home and either fall asleep or merely gratify sexual impulse with them without any emotional overtones to the act. Mothers-in-law do untold injustice to daughters-in-law. The other relatives make things even worse for the poor brides. This often leads to the very tragic phenomenon of commission of suicide. The husband-wife, mother-child relations become purely artificial without a touch of spontaneity about them.
- **Child marriage:**
- Incidence of child marriage is quite high in case of the joint family. Factors like perception of marriage as a burden on the part of 'Karta' and the eagerness of the elderly people to see the marriage of their grandsons and granddaughters lead to child marriage. Child marriage not only affects the physical and mental health of the children but also contributes to the rapid growth of population.
- **Miserable economic condition:**
- Due to prevalence of many formidable factors such as the daily strife, the deplorable plight of women, absolute rule of elders, lack of responsibility on youngsters and blind procreation, the economic condition of the joint family becomes very dismal and miserable. Everyone in a joint family knows that whatsoever he spends will be managed by the family. He will, therefore, not try to save but will, on the other hand, spend to the maximum.
- This is certainly an unhealthy practice pursued by some in a joint family set-up. Again, being joint responsibility common property is neglected and particularly nobody pays any care and attention to the landed property. Produce considerably comes down. There is no initiative and this result in lowering of standard.

5 Karachi – Fundamental Rights Resolutions

Presides by Sardar Patel congress adopted it and later it become Karachi – Fundamental Rights Resolutions

Some important aspects of this religion are:-

1. Basic civil rights of freedom of speech, press, assembly and associations.
2. Equality before Law.
3. Universal Adult franchise.
4. Free and compulsory Primary Education.
5. Reduction in Rent and Taxes.
6. Better conditions in workplace and limited hours.
7. Protect women and peasants.
8. Government control and ownerships of key industries, mines, and transport.
9. Protection of minorities.

6. Equality of sexes

- Education
- Marriage
- Prostitution
- Equality
- Social equality
- Divorce right
- Religious differences
- Purdah system

UNIT 2

Women in Post Independence

1. Preamble of the constitution- Equality provision in FR and DPSP

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmers have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.

CONSTITUTIONAL PROVISIONS

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

Constitutional Privileges

(i) Equality before law for women (Article 14)

The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))

(iii) The State to make any special provision in favor of women and children (Article 15 (3))

Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)

The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a); and equal pay for equal work for both men and women (Article 39(d))

To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)

(vii) The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)

The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)

(ix) The State to raise the level of nutrition and the standard of living of its people (Article 47)

(x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))

(xi) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))

(xii) Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every

Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))

Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4)).

LEGAL PROVISIONS

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

The Crimes Identified Under the Indian Penal Code (IPC)

- Rape (Sec. 376 IPC)
- Kidnapping & Abduction for different purposes (Sec. 363-373)
- Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- Torture, both mental and physical (Sec. 498-A IPC)
- Molestation (Sec. 354 IPC)
- Sexual Harassment (Sec. 509 IPC)
- Importation of girls (up to 21 years of age)

The Crimes identified under the Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- The Employees State Insurance Act, 1948
- The Plantation Labour Act, 1951
- The Family Courts Act, 1954
- The Special Marriage Act, 1954
- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956 with amendment in 2005
- Immoral Traffic (Prevention) Act, 1956
- The Maternity Benefit Act, 1961 (Amended in 1995)
- Dowry Prohibition Act, 1961
- The Medical Termination of Pregnancy Act, 1971
- The Contract Labour (Regulation and Abolition) Act, 1976
- The Equal Remuneration Act, 1976
- The Prohibition of Child Marriage Act, 2006
- The Criminal Law (Amendment) Act, 1983
- The Factories (Amendment) Act, 1986
- Indecent Representation of Women (Prohibition) Act, 1986
- Commission of Sati (Prevention) Act, 1987
- The Protection of Women from Domestic Violence Act, 2005

Special Initiatives For Women National Commission For Women

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

Reservation for Women in Local Self -Government

The 73rd Constitutional Amendment Act passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

The National Plan of Action for the Girl Child (1991-2000)

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

(iv) National Policy for the Empowerment of Women, 2001

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

2. Negative aspects of the constitution – Exploitation of sex not mentioned in article 23.

3. Trafficking in Women and Children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. The Indian Constitution specifically bans the traffic in persons. Article 23, in the Fundamental Rights section of the constitution, prohibits "traffic in human beings and other similar forms of forced labor". Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement /transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users etc., exploit the vulnerability of the trafficked person. Trafficking shows phenomenal increase with globalization. Increasing profit with little or no risk, organized activities, low priority in law enforcement etc., aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs.
4. Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sex -based and (b) Non-Sex-based. The former category includes trafficking for prostitution, Commercial sexual abuse, Pedophilia, Pornography, Cyber sex, and different types of disguised sexual exploitation that take place in some of the massage parlors, beauty parlors, bars, and other manifestations like call girl racket, friends clubs, etc. Non sex based trafficking could be for different types of servitude, like domestic labor, industrial labor, adoption, organ transplant, camel racing marriage related rackets etc. But the growing traffic in women is principally for the purpose of prostitution. Prostitution is an international problem which can be found in both developing and industrialized nations. Unfortunately, society remains tolerant of this abominable crime against women. There are ways of getting women into prostitution that are common to many countries; then there are particular methods unique to a country. Probably the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions.
5. In a recent survey in India, prostituted women cited the following reasons for their remaining in the trade, reasons that have been echoed in all concerned countries. In descending order of significance, they are: poverty and unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes; family expectations and pressure; resignation and acclimatization to the lifestyle.
6. The two principal Indian laws that address trafficking and prostitution in particular are the Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA) and the Immoral Traffic (Prevention) Act of 1986 (ITPA), colloquially called PITA, an amendment to SITA. Neither law prohibits prostitution per se, but both forbid commercialized vice and soliciting. Aside from lack of enforcement, SITA is problematic in several ways. One of its drawbacks is that the prescribed penalties discriminate on the basis of sex: a prostitute, defined under SITA as always a woman,

who is arrested for soliciting under SITA could be imprisoned for up to a year, but a pimp faces only three months. SITA allowed prosecution of persons other than the prostitutes only if the persons involved "knowingly" or "willingly" made women engage in prostitution. Accordingly, pimps, brothel owners, madams, and procurers could feign ignorance of prostitution and escape punishment. The client, moreover, was not viewed as an offender and could not be sanctioned under SITA. Finally, SITA only addressed street prostitution; prostitution behind closed doors was left alone -- a loophole that actually promoted the establishment of brothels.

7. SITA, a penal law, was passed in 1956 and enforced in 1958 as a consequence of India's signing the Trafficking Convention, rather than as a result of any mass social welfare movement. SITA did not seek the "abolition of prostitutes and prostitution as such and to make it per se a criminal offence or punish a person one prostitutes oneself." Its stated goal was "to inhibit or abolish commercialized vice, namely the traffic in persons for the purpose of prostitution as an organized means of living." Prostitution was defined as the act of a female who offers her body for promiscuous sexual intercourse for hire. Accordingly, the engagement by a woman in individual, voluntary, and independent prostitution was not an offense.
8. The law permitted penalization of a woman found to be engaged in prostitution under certain conditions. For example, Section 7(1) penalized a woman found engaged in prostitution in or near a public place. Section 8(b) did the same for a woman found seducing or soliciting for purposes of prostitution. The law also permitted a magistrate to order the removal of a person engaged in prostitution from any place and to punish the person upon refusal. Offenses under SITA were bailable, but a woman picked up from the street by the police usually did not have either the money or the influence to keep her out of custody or free from fines.
9. Several studies across India have shown that this is the most abused section of the ITPA, used more as a tool for harassment and extortion by the law enforcement. Women are apprehended from known red-light areas whereas their brothel keepers and pimps are left untouched. In cases of organized prostitution, this results in continual debt bondage for the amount paid by her keepers as a fine or as a bail amount. In fact, sometimes the brothel keepers are alleged to collude with policemen and arrange the arrests of "their" women so they can continue to serve in bondage.
10. India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organized and a commercialized vice. However, it commits itself to opposing trafficking as enshrined in Article 23 of the Constitution which prohibits trafficking in human beings. India is also a signatory to international conventions such as the Convention on Rights of the Child (1989), Convention on Elimination of all forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002).
11. A trafficked victim is therefore, a victim of multiplicity of crimes, and extreme form of abuse and violation of human rights. The constitution of India, under article 23 specifically prohibits trafficking in human beings. At present the legal regime to trafficking of women and children for commercial sexual exploitation includes the following.
 - a. Indian Penal Code 1860
 - b. ITPA-1956
 - c. J.J. Act-2000.
 - d. Special laws of various states.
 - e. Rulings of Supreme Court and High Court.
12. The lack of understanding of trafficking by the legal system could arise from one or more of these factors: first, there is no definition of "trafficking" or "trafficker" under the Act. Therefore, the police and the judiciary do not have an understanding of the complexities involved when a woman is trafficked, the different types of traffickers, and their strategies. Neither does the

court attempt to hear the trafficked woman and her experiences. Second, the Act also focuses on establishing "the purposes of prostitution" for every offence which conveniently takes the attention away from trafficking. For example, even to convict a trafficker for the act of keeping a brothel, it becomes important to establish that prostitution was taking place. So, when a woman who is trafficked is kept in captivity for a period of time, it cannot amount to an offence unless the place satisfies the criteria of a "brothel." Similarly we find that in every case involving a raid there is also an elaborate description of how the woman was clothed when the raiding party found her in order to prove that she was getting ready for sexual intercourse with the decoy witness and thus her existence for the "purpose of prostitution" could be established beyond "reasonable doubt." That the clothing or actions of a woman at that point of time should not negate the fact that she was trafficked seems to slip away from the adjudication process. The Act thus misses out on what actually constitutes trafficking--the elements of force, deception, and coercion, which go on overtly and covertly over a period of time. Thirdly, in spite of the definition of prostitution having changed from "the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise" to "sexual exploitation or abuse of persons for commercial purpose," there is no perceptible attitude shift in the lawmakers and enforcers from taking efforts to curb prostitution to curbing trafficking. Moreover no powers are given to the Magistrate to order eviction of traffickers.

13. Thus there exists a need for a specialized legislation in India to deal with trafficking even though the existing Indian Penal Code (IPC), 1860, deals with the offences of kidnapping, abduction, and buying and selling of minors (Sections 359-373 of IPC). The IPC is narrower in scope to deal with the wide range of activities involved in trafficking which do not neatly fit into "kidnapping" or "abduction." For example luring, coaxing individuals in vulnerable positions with false promises of better jobs, contract work as domestic workers, mail order brides, and situations where the women are sold in connivance with the parents or husband. The IPC is thus less adept in dealing with the nuances involved in organized trafficking

14. Personal law differences

The most significant manner in which personal laws in civil matters affect the rights discourse is by delineating rights for women belonging to their respective religious communities. The 'family' remains one of the most contested sites of women's rights. One of biggest criticism working against personal laws is that these antiquated provisions are discriminatory towards women and seek to undermine their position within the private domain. Personal religious laws need to be tested for their conformity with principles of egalitarianism that are the touchstones of our Constitution as well as international declarations/agreements to which India is a party.

There are five broad sets of family laws in India based on the religions professed by its different communities. Hindu law governs all Hindus, as also Buddhists, Jains and Sikhs. Muslim law applies to Muslims, Christian law governs Christians, Parsee law applies to the Parsees. Jews have their own personal law. Many provisions of the various Indian personal laws are notorious for being discriminatory towards women. A brief description of how women's rights are undermined under various personal laws follows:

I Marriage: The right of all men and women of certain to marry through free consent and with complete freedom in the choice of a spouse is recognized internationally. However, Indian personal laws are found wanting in this aspect. Muslim law, for instance, appears to recognize the right of a guardian to contract his minor ward into marriage. There is a remedy in the form of 'option of puberty' (right to repudiate marriage on attaining puberty) but it is restricted for as far as women are concerned. Under Hindu law (Hindu Marriage Act, 1955) too, it is not the mere absence of consent but the obtaining of consent by fraud or force or vitiation of consent by proved unsoundness of mind that renders the marriage void. Fortunately, Special Marriage Act, 1954, possibly the most progressive piece

of Indian legislation enacted under family law, overcomes the bar or strict restrictions on inter-religious marriages under personal law. Polygamy is a contentious issue in today's world where monogamy, fidelity and family welfare are the norm. This institution used to prevail in Hindu society previously but modern legislation (The Hindu Marriage Act, 1956) prohibits bigamy (covering both polygamy and polyandry) the Penal Code makes it an offence. Muslim personal law, however, recognizes and permits the institution of polygamy. Many scholars believe that under Indian circumstances, polygamy is largely an anachronism from patriarchal times and that very few Indian Muslims practice it. This view may be correct to some extent but ignores that such a practice that is the prerogative of a select few creates fissures and religious tensions in society. There have been many instances in the past of abuse of this practice as permitted under Islam. Often, non-Muslims convert to Islam in order to marry more than once and while Courts examine the intention behind such conversions to decide on the question of validity of second marriages, such a phenomenon generates strife and also affects rights of the parties involved.

Divorce: Traditional Hindu law did not recognize the concept of divorce but modern law provides for it under the Hindu Marriage Act, 1956, which largely provided for fault-grounds which either spouse could avail in order to obtain a divorce.

The most remarkable, and most discriminatory, feature of Islamic law of divorce is the recognition of the concept of unilateral divorce, wherein the husband can divorce his wife unilaterally, without any cause, without assigning any reason, even in a jest or in a state of intoxication, and without recourse to the court and even in the absence of the wife, by simply pronouncing the formula of repudiation. Muslim law also entitles the woman to ask for a divorce under certain restricted circumstances. Modern law (The Dissolution of Muslim Marriages Act, 1939) allows a wife to obtain a divorce through the intervention of a judge, before whom she must establish one of a limited number of acceptable bases for divorce. The fact that on a moral plane, divorce is reprehensible in Islam and has been denounced by Prophet does not provide relief to women as unilateral divorce continues to be an accepted practice in many countries including India.

Maintenance: Under Indian law, the right to maintenance is civil in nature but it is also placed under the criminal code and can be pursued therein.

Under Hindu law, a wife has a right to be maintained during her lifetime as per the provisions of the Hindu Adoptions and Maintenance Act, 1956. In what can be called an attempt to reinforce the conservative idea of a Hindu wife, an "unchaste" wife is not entitled to separate residence and maintenance. As far as Muslim law is concerned, many interpretations of the shari'a do not grant divorced women a right to maintenance from their former husband's beyond the three-month waiting period following the divorce, called the iddat period. In India, the Dissolution of Muslim Marriages Act, 1939 denies divorced Muslim women the right to claim maintenance. In the famous Shah Bano judgment, the judiciary attempted to get rid of this anomaly by explicitly bringing such Muslim women under the purview of the secular Code of Criminal Procedure, 1973 (wherein a wife is entitled to claim maintenance against the husband on the ground of the husband's neglect or refusal to maintain her). Shah Bano case was a classic conflict situation between the secular criminal code and religious personal law. In this case, an old Muslim woman had been divorced by her husband who invoked the Muslim personal law to deny maintenance to his wife. The Supreme Court, however, applied and interpreted the secular law, the Criminal Procedure Code, to grant maintenance. Though the judiciary is to be commended for giving a humane and holistic meaning while applying the relevant provisions, the judgment is often criticized for entering into a discourse of the Quran, taking pains to explain that the secular law was not in conflict with the Quran and in the process, sidelining the constitutional question of examining the personal law of husband on the anvil of equality and deciding the dispute as an equality issue. The deliberate use of Quran and the endeavors to interpret it in a particular manner evoked the wrath of the Muslim conservatives, who stressed community fears of the loss of freedom of religious practice. Finally, the Government, yielded to pressure from the orthodox members of the

Muslim community and, without any consultation, passed the Muslim Women's (Protection of Rights in Divorce) Act, 1986, in spite of protest from progressive Muslims and feminists. This Act ostensible protects women but in reality protects the husband by not requiring him to pay maintenance. It is highly discriminatory towards Muslim women in that they are now precluded from the purview of S.125 of the Criminal Procedure Code which had originally protected Shah Bano. Specific requirements of the new Act also make it much more likely that a Muslim woman will be required to conduct a court case in order to obtain any maintenance at all. Thus, although the Act nowhere stipulates this, the rights available to the Muslim women at the time of enactment of this Act were abrogated. By indulging in votebank politics, the government of the day hastily drafted this piece of legislation so as to confirm to the conservative and traditional view of the Muslim law governing 'maintenance' of divorced women.

Inheritance: Under the Hindu law, the Mitakshara branch of law that primarily governs succession amongst Hindus in the country denied to a Hindu daughter a right by birth in the joint family estate and this flowed logically from the fact that her place in the paternal family was only temporary as she was belonged to her husband's family on marriage. Modern day amendments to Hindu law of succession gave Hindu widows the right of succession her husband's estate. Till recently, Hindu law was still discriminatory in that the Hindu Succession Act, 1956 excluded the daughter from coparcenary ownership of ancestral property. In 2005 the Parliament, by an amendment, took a radical but much-awaited step towards ensuring equality between Hindu men and women as far as succession is concerned, and conferred upon daughters the status of coparceners in the family of their birth, thereby bringing an end to the centuries-old rules of Hindu inheritance that have lost their relevance and justifications. Though the full extent of implications of this amendment are yet to be observed, it is nonetheless a commendable and desired step in the effort to check in-built biases against women in personal laws of this country. More importantly, this radical amendment was brought by the Parliament without facing any resistance or impediment on the part of the Hindu community.

Islamic law prescribes, in almost all instances, that a man's share of the inheritance is double that of a woman in the same degree of relationship to the deceased. This aspect of Islamic rules is most vehemently criticized for its discrimination against women, as it is a manifest sample of unequal treatment.

Guardianship and Adoption: A mother has been assigned a statutorily subservient position in the matter of guardianship and custody of her children. The father is designated the first natural and legal guardian of his minor; the mother is the natural guardian only after the father. Under Muslim law, the father is the sole guardian of the person and property of his minor child. Adoption is a salient feature of Hinduism, more so because the concept is alien to Christian, Muslim and Parsi law unless custom and usage among the above sects permit it. The Hindu Adoptions and Maintenance Act, 1956 statutorily recognizes adoption and is applicable to Hindus. The Act brought about significant changes to the law of adoption amongst Hindus and has improved the position of women in this regard. However, despite these changes, adoption is another area in family relations where a female suffers discrimination based purely on her marital status. As with other aspects of Hindu personal law, amendments have recently been proposed so as to give women the same rights as men to guardianship and adoption of children irrespective of marital status.

II. Personal Law, Human Rights and Supreme Court

A major feminist critique of the current human rights discourse is that anti-discrimination measures cannot concern themselves only with conduct of public officials, that is to say, with relations between individuals and government. Discrimination in the 'private' sphere of home, workplace and school must also be addressed, given the power vested in the institutions of family and the community to arbitrate the women's rights and freedoms. The apex court of the country has often fallen prey to this false public-private dichotomy by failing to intervene in the personal laws governing private domain in order to check discriminatory practices therein, probably regarding the need for changes in family matters etc. as 'social' and 'developmental' issues. Most interventions have been piecemeal. In the instances where

the court has been sympathetic towards the aggrieved party, it has circumvented the need to declare the relevant sections personal law as unconstitutional by reading and interpreting the impugned provision in such a manner that somehow or the other, relief could be provided to the party who has suffered.

On the contrary, the Supreme Court has done a commendable job in addressing discrimination in the public domain and has taken cue from the international covenants for this purpose. For instance, it has laid down a number of guidelines amounting to judicial legislation in the field of sexual harassment at work place. However, personal laws have often been kept beyond the reach of fundamental rights by shifting the burden of sanitizing the discrimination in personal laws to the Parliament. Surprisingly, Supreme Court has not hesitated in giving full effect of certain other Directive Principles of State Place, such as the right to education, and elevating them to the status of a Fundamental Right. A similar approach has not been forthcoming on the Constitutional directive to bring about a uniform civil code, though the courts have time and again exhorted the government of the day to take necessary steps in this direction. As recently as February, 2011, the Supreme Court, while discussing lack of uniformity in marriageable age and age of consent, pulled up the government for its failure to overhaul personal laws of the minority communities, saying that it was a reflection on their secular credentials. Notably, the Court also observed that the government's attempts to reform personal laws had not gone beyond Hindus who have been more tolerant of such initiatives. Perhaps the Shah Bano episode served as a landmark in the policy of judicial intervention in personal laws. The backlash of the community was not as unfortunate as the complete disregard by the then government of Constitutional directives, egalitarian values and notion of justice.

3. Uniform Civil Code towards gender justice

The first Prime Minister of India, Jawaharlal Nehru, and the first Law Minister, Dr B. R. Ambedkar, were both modernists who wished to reform archaic personal laws and bring them in line with progressive notions of gender justice. They were both committed, in theory, to a Uniform Civil Code. However, faced with the bitter opposition of Muslim members in the Constituent Assembly, they decided to begin with the reform of the personal laws of the Hindus, a community whose liberal wing was both influential and articulate. All the same, it took them all of eight years to pass the laws that finally made caste irrelevant in marriage, allowed Hindu women the right to choose or divorce their marriage partners, abolished bigamy and polygamy among Hindus, and granted Hindu daughters and wives rights in the property of their fathers and husbands.

Women empowerment in core areas like social status, gender bias, health, security and empowerment are of urgent necessity. The Indian state has in fact encouraged codifying tribal customary laws. But there are inherent problem with codification as tribal laws have historically evolved and are still changing. Article 44 expects from the State to secure a Uniform Civil Code for all citizens of India. There is no Uniform Civil Code in India but a Uniform Criminal Code exists. The Criminal law is equally applicable to all citizens irrespective of their religious affiliation. However in the case of civil law particularly in the matter of personal laws there is no uniformity. The law is relating to marriage, divorce, maintenance, guardianship and succession governing the Hindus, Muslims and Christians etc., is different and varies from one religion to other. This paper will discuss all the personal law of every community with the various judgments of the Supreme Court of India where the apex court has suggested to the Central Government for the enactment of a Uniform Civil Code. A uniform civil code will help the cause of national integration. It is the humble opinion of the researcher that a Uniform or common civil code is possible only when the governments consider the gender justice as the ultimate goal There are different laws like the Hindu Marriage Act; the Hindu Succession Act; the Hindu Minority and Guardian ship Act, the Hindu Adoption and Maintenance Act governing the personal matters of Hindus. The Shariat Act, The Dissolution of Muslim Marriage Act and the Muslim Women (protection of Rights on Divorce) Act etc., which are based on the tenets of Holy Quran, govern the personal matters of Muslims. Similarly the Indian Christians are governed by the Indian Christian Marriage Act, the Indian

Divorce Act and the Cochin Christian Succession Act etc. Parsis are governed by a different set of laws. Thus it is clear that there is no uniformity in all personal laws as they confer unequal rights depending on the religion and the gender.

Hindu Law

Till the codification of Hindu Law in 1955 and 1956 the Hindu Women did not enjoy equal rights along with the Hindu men. Before 1955 polygamy was prevalent among the Hindus. The Hindu women could not hold any property as its absolute owner except in the case of Stridhana. She had only limited estate which was passed on to the heirs of the last full male owner called reversionary on her death. In the matter of adoption a Hindu woman had no right to adopt a child on her own. She could not be the natural guardian of her children during the life of her husband. These examples are only illustrative in nature and not exhaustive. Even though the Hindu law has been codified, certain discriminatory provisions still exist even today. For example a Hindu woman is not a coparcener in Hindu coparceners except in a few states like Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu. Consequently she is not entitled to claim a share in the coparcenary. Similarly she has no right to partition of a dwelling house even though she is a legal heir. Thus it is obvious that the codification of personal law of Hindus has not succeeded completely in eradicating the gender inequality.

Muslim Women

In the Pre-Islamic Arabia, the women enjoyed a secondary status in all respects when compared to men. The advent of Islam has contributed much for the amelioration of Muslim women and alleviation of their problems. The Holy Quran gives equal rights to men and women and places women in a respectable position. However there are certain aspects in Islam that render the position of Muslim women especially the wives insecure and inferior. A Muslim male is permitted conditionally to marry as many as four wives at a time. It is important to note that the polygamy among Muslim men is only permission but not a compulsion. The Shia Muslim male can contract muta marriages for an agreed period of time. There is no ceiling on the number of muta marriages that may be contracted by a Muslim male. In the matter of divorce the position of the Muslim women is the most inferior and insecure compared to others. Particularly the method of divorcing the wife by the husband by pronouncing triple 'Talak' is highly discriminatory. This is in spite of the clear message of Holy Quran.

Recently the Allahabad High Court has held that the practice of the triple talak is unlawful and void. In the matter of succession, a Muslim woman is discriminated against despite the assertion of certain Muslim scholars that the Islam in this regard is more progressive and liberal. The legal position is that when two scholars or residuary of opposite sex but of the same degree inherit the property of the deceased, the Muslim male gets twice the share of the female. For example if brother and sister inherit the property as successors, the brother gets two shares whereas the sister gets only one share. The Indian Constitution, in its part IV, Article 44 directs the State to provide a Uniform Civil Code throughout the territory of India. However, it is only a directive principle of state policy; therefore it cannot be enforced in a court of law. It is the prerogative of the state to introduce Uniform Civil Code. The Constituent Assembly Debates clearly shows that there was a wide spread opposition to the incorporation of Article 44 (Article 35 in the Draft Constitution), particularly from the Muslim members of the Assembly. Naziruddin Ahmed, Mohd. Ismail Sahib, Pocker Sahib Bahadur and Hussain Sahib etc., made a scathing attack on the idea of having a Uniform Civil Code in India on the grounds that the right to follow personal law is part of the way of life of those people who are following such laws, that it is part of their religion and part of their culture, that it would lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country and that in a country so diverse it is not possible to have uniformity of civil law. However, one of the most illustrious members of the Assembly, K.M. Munshi strongly felt that if the personal law of inheritance, succession etc is considered as a part of the religion, the equality of women can never be achieved.

Judicial Opinion and Uniform Civil Code

The judiciary in India has taken note of the injustice done to the women in the matters of many personal laws. It has been voicing its concern through a number of judgments indicating the necessity to have uniformity in personal matters of all the citizens. In the case of Mohd Ahamed Khan vs. Shah Bano Begum AIR 1985 SC 945 pertaining to the liability of a Muslim husband to maintain his divorced wife beyond iddat period, who is not able to maintain herself, the Supreme Court held that Section 125 Cr. P. C which imposes such obligation on all the husbands is secular in character and is applicable to all religions. In Ms. Jordan Deigndeh vs. S.S. Chopra, D Chinappa Reddy, J. speaking for the court referred to the observations of Chandrachud, C.J. in Shah Bano's case and observed as under: "The present case is yet another event which focuses on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of uniform civil code is exposed by the facts of the present case. Again in Sarala Mudgal vs Union of India AIR, 1995 1531, a division bench of the Supreme Court consisting of Kuldip Singh and R.M. Sahai, JJ strongly advocated the introduction of a Uniform Civil Code in India. In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose Of contracting bigamous circumvents Section 494 of Indian Penal Code. Such marriages have been declared as bigamous and void by the court. The court after referring to various precedents on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to second marriage while the first marriage is subsisting to become a Muslim. Here the Court was pointing out the injustice done to the first wife, legally wedded.

The Bench noted the failure of successive governments till date, to implement the constitutional mandate under Article 44 of the constitution of India. It was suggested that the personal laws of the minorities should be rationalized to develop religious and cultural amity preferably by entrusting the responsibility to the Law Commission and Minorities Commission. The Bench further directed the Government of India to file an affidavit indicating the steps taken and efforts made to have a fresh look at Article 44 in August, 1996. However, the latter direction was treated as "obiter dicta" by the court subsequently.

List of Law relating to women

- **WOMEN-SPECIFIC LEGISLATIONS**
 1. The Immoral Traffic (Prevention) Act, 1956
 2. The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)
 3. The Indecent Representation of Women (Prohibition) Act, 1986
 4. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
 5. Protection of Women from Domestic Violence Act, 2005
 6. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013
- **WOMEN-RELATED LEGISLATIONS**
 1. The Indian Penal Code, 1860
 2. The Indian Evidence Act, 1872
 3. The Indian Christian Marriage Act, 1872 (15 of 1872)
 4. The Married Women's Property Act, 1874 (3 of 1874)
 5. The Guardians and Wards Act, 1890
 6. The Workmen's Compensation Act, 1923
 7. The Trade Unions Act 1926
 8. The Child Marriage Restraint Act, 1929 (19 of 1929)
 9. The Payments of Wages Act, 1936
 10. The Payments of Wages (Procedure) Act, 1937
 11. The Muslim Personal Law (Shariat) Application Act, 1937
 12. Employers Liabilities Act 1938

13. The Minimum Wages Act, 1948
14. The Employees State Insurance Act, 1948
15. The Factories Act, 1948
16. The Minimum Wages Act, 1950
17. The Plantation Labour Act, 1951 (amended by Acts Nos. 42 of 1953, 34 of 1960, 53 of 1961, 58 of 1981 and 61 of 1986)
18. The Cinematograph Act, 1952
19. The Mines Act 1952
20. The Special Marriage Act, 1954
21. The Protection of Civil Rights Act 1955
22. The Hindu Marriage Act, 1955 (28 of 1955)
23. The Hindu Adoptions & Maintenance Act, 1956
24. The Hindu Minority & Guardianship Act, 1956
25. The Hindu Succession Act, 1956
26. The Maternity Benefit Act, 1961 (53 of 1961)
27. The Beedi & Cigar Workers (Conditions of Employment) Act, 1966
28. The Foreign Marriage Act, 1969 (33 of 1969)
29. The Indian Divorce Act, 1969 (4 of 1969)
30. The Contract Labour (Regulation & Abolition) Act, 1970
31. The Medical Termination of Pregnancy Act, 1971 (34 of 1971)
32. Code of Criminal Procedure, 1973
33. The Equal Remuneration Act, 1976
34. The Bonded Labour System (Abolition) Act, 1979
35. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
36. The Family Courts Act, 1984
37. The Muslim women Protection of Rights on Dowry Act 1986
38. Mental Health Act, 1987
39. National Commission for Women Act, 1990 (20 of 1990)
40. The Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006]
41. Juvenile Justice Act, 2000
42. The Child Labour (Prohibition & Regulation) Act
43. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse) Act 1994

4. School of Feminism

(a) Marxist Feminism

Marxist Feminists support the economic theories of Karl Marx. In the Origin of the Family, Private Property and the State', Fredrick Engels was of the view that women's oppression developed with the disappearance of matrilineal families. He further pointed out that with the Patriarchal family, males gained power within the family and society due to the development of agriculture. Through farming men became property owners and wished to have a method to pass this property to children. For this matrilineal descent had to end since men did not have clear heirs in that system. Consequently matriarchal law of inheritance was overthrown and the male line of descent and the paternal law of inheritance were substituted. Engels further pointed out that male oppression of females depend on property rights and inheritance. According to him the only solution to end this oppression is to eliminate this property rights. So long as men have property, women would remain subordinate within the family. Feminist saw support and inspiration in Marxism because Marxism called for liberation of women from oppression. He argued that mass revolution was impossible without female emancipation. Marxist Feminist found that males were completely dominating every area including 'thinking'. This resulted in women's liberation movement in the late 18th century.

(b) Liberal Feminism

Liberal feminism is an ideology of egalitarianism. Its proponents hold the view that women are capable of performing in the public sphere despite their physical differences. This can be achieved by removing the inequality in law and society because a legal system is framed on the basis of social norms that are always male oriented. Hence law would become fair only if it is restructured to include women also. The arm of law must be extended to private sphere. Women's contribution to the family in the form of domestic labour is left untouched by the State.

Liberal feminist like Mary Wollstonecraft, Betty Friedan advocated for the elimination of practices and laws which effectively deny women access to public sphere of life and confine women to the private sphere, the home. Men in turn took control of public sphere including policy and law making. As a result women were silenced and kept under constant subjugation. Hence women would not get an opportunity to raise their voice in public matters.

(c) Radical Feminism

Radical feminists on the other hand focused on the problem of the Universal dominance of men over women and the consequent subordination of women to men. Their aim was to challenge and to overthrow Patriarchy by protesting against stereotyped gender roles and male oppression of women. So they demanded for a radical restructuring of society. The western radical feminists assert that their society is patriarchal which primarily oppresses women

(d) Cultural Feminism

Cultural feminism gained with the disappearance of radical feminism. Radical feminism was a movement to transform the society, where as cultural feminism aimed to build a women's culture. It was an attempt to revalidate undervalued female attribute. They enquired the perceived differences between women and men while analyzing the impact of women's difference in socio-political terms.

The chief proponents of cultural feminism are feminists like Nancy Chodorow, Luce Irigaray, educational psychologist Carol Gilligan and Jane Adams. They addressed the problem of suppression of distinctive or different female qualities, experiences and values. They believe that the suppression of the female qualities is the primary cause of women's subordination. So their focus was not elimination of patriarchy. They aim to create an alternative female consciousness for establishing and nurturing women's qualities. Nancy Chodorow traces the development of children to adulthood relying on sociological and psychoanalytical theory to explain the phenomenon of mothering with men.

E) Socialist Feminism

Like all other feminism, socialist feminism is theoretically centered around Patriarchy which are the traditional rules exalting men and demeaning women. They demanded the recognition of the economic value of child rearing and domestic work by the State. They believe that free labour is not in tune with the principle of equality between individuals. As a solution they suggest payment for household work. However the drawback in this suggestion is that it would result into woman becoming the employee of her husband, which is totally inconsistent with idea of liberation of women as free independent economic beings. This would further enslave women and keep them confined to home.

UNIT 3
SEX INEQUALITIES IN INHERITANCE LAW

“Women are the only oppressed group in our society that lives in intimate association with their oppressors.” Evelyn Cunningham

~

Personal law

Laws governing Hindus

- The Hindu Marriage Act, 1955
- The Hindu Adoptions and Maintenance Act, 1956
- The Hindu Minority and Guardianship Act, 1956
- The Hindu Succession Act, 1956

Laws governing Muslims

- The Kazis Act, 1880
- The Muslim Personal Law (Shariat) Application Act, 1937
- The Dissolution of Muslim Marriages Act, 1939
- The Muslim Women (Protection of Rights on Divorce) Act, 1986
- The Muslim Women (Protection of Rights on Divorce) Rules, 1986

Laws governing Christians

- The Indian Christian Marriage Act, 1872
- The Divorce Act, 1869 (Prior to the amendment in 2001, this Act was called the Indian Divorce Act, 1869)
- The Indian Succession Act, 1939

Laws governing Parsis

- The Parsis Marriage and Divorce Act, 1936
- The Indian Succession Act, 1939

1. Inheritance in Hindu law

Hindu women's Right to Property in the Pre-Constitutional Period

A Hindu woman, whether a maiden, a wife or a widow has never been denied the use of her property. Even in Manusmriti one can see that right to hold property had been respected. Jurists like Yajnavalkya, Katyayana and Narada further promoted the concept of women's right to property. Women's property rights improved and defined during their time. It was Gautama Dharmasastra who first called women's property as Stridhana share. Mayne also opined that the original bride price payable to the parents appears to have become transferred into the dowry for the wife. Apart from this stridhana, a married woman could receive gifts from strangers; she could also make her own contributions by doing other skilled labor. Yet she had no absolute control over her property because her right to dispose of the property is restricted.

Gender Equality: Reforms in Hindu Law

The history of Hindu Law reform starts with the Hindu Law committee (Rau Committee) set up in 1941. It was followed by second Committee in 1944. The committee finally submitted its report to the Federal Parliament in 1947. The recommendations of the committee were debated in the provincial Parliament. There was strong opposition against the introduction of monogamy, divorce, abolition of coparcenary and inheritance to daughters from the orthodox Hindu community. The Congress legislator from West Bengal argued that only women of the lavender,

Hindu Women's Property Rights under the Hindu Succession Act 1956

Women's right to property has been substantially improved by the Hindu Succession Act 1956. The concept of women being entitled to a limited estate when they acquire property by inheritance is abolished and women are entitled to an absolute estate like men when they inherit any property. Again the daughter of a predeceased son and the daughter of a predeceased daughter are raised to a higher rank. They became Class – I heirs and get a share along with the son, and other Class – I heirs. The daughters are included in the Class – I in order to remove the discrimination on the basis of sex. Similarly succession to a women's property or stridhanam of whatever nature is made uniform irrespective of the nature of stridhanam. In the same way the distinction between male and female heirs in the case of succession has been taken away and now they are treated on equal basis if they belong to the same degree of relationship. Women will no longer be disinherited on the ground of unchastity.

Under Section 14 of The Hindu Succession Act 1956, the limited interest of Hindu female is converted into absolute rights. If she gets property from her husband she can sell it and the purchaser gets absolute right in the property

Similarly section 15 is the first statutory enactment that deals with succession of Hindu female's property when she dies intestate before the Act the property of women dying intestate was governed by customary Hindu law. She had only limited interest which would be terminated on her death. It is heartening to note that the Act provides two different laws based on the sex of the intestate. This double scheme is the traditional method intended to protect the family property. The property of a female Hindu dying intestate shall devolve according to the rules set out under section 16. (a) Firstly sons and daughters (including the children of any predeceased son or daughter) (b) secondly upon the heirs of the husband thirdly upon the mother and father (d) fourthly upon the heirs of the father and (e) lastly upon the heirs of the mother.

Again (a) any property inherited by a female Hindu from her father or mother shall devolve in the absence of any son or daughter of the deceased (including the children of any pre deceased son or daughter) not upon the heirs referred to in sub section (1) in the order specified there in, but upon the father. (b) So also any property inherited by a female Hindu from her husband or from her father – in – law shall devolve in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub section 1 but upon the heirs of the husband.

Hindu Succession (Amendment) Act 2005

The object of amending the Hindu Succession Act 1956 is to strike at the root of patriarchy that has been perpetuated through the Mitakshara coparcenary. Section 6 of the Act excluded women from inheriting the ancestral property because women are not coparceners. The Amendment Act 2005 crushed the exclusive citadel of male coparcenary in order to give effect to the principle of equality enshrined in Part III of the Indian Constitution. The gender discrimination in the

Mitakshara coparcenary has been completely wiped off by raising the status of female members of the Hindu joint family equal to that of the male coparceners.

The Amendment made in 2005 was based on the recommendations made by the Law Commission in its 174th Report on Hindu women's property rights. In fact the Commission had taken the subject suo motu because of the glaring discrimination existed in the Mitakshara coparcenary⁶³. It was observed by the Commission that since time immemorial property laws were enacted for the benefit of men. Property rights had been denied to Hindu women just to exercise control over them and to make them subjugated and dependent on men⁶⁴. In the Joint family women were entitled only to maintenance. On the contrary a son acquires birth right in the ancestral property since he is a coparcener. The retention of the coparcenary excluding females perpetuated the traditional male dominance in the matter of inheritance. The Commission pointed out this inequity and said that it is in fact a fraud on the

Constitution. On the basis of these findings the commission recommended for the amendment of Section 6 of the Hindu Succession Act 1956.

It is pertinent to note the objects and reasons for the 2005 amendment of Hindu Succession Act 1956. It is stated that the Hindu Succession Act 1956 has amended to codify the law relating to intestate succession among Hindus. It is further stated that social justice demands that a woman should be treated equally both in economic and social justice. The exclusion of daughters from participating in coparcenary property ownership merely by reason of their sex is unjust.

2. Inheritance Rights of Muslim Women under the Muslim Personal Law

Muslim women rights have been a topic of discussion ever since the Constitution came into force in 1950. Islamic law (Shariah) is considered by many as patriarchal and oppressive to women. However the Quran has addressed women's issues fourteen hundred years ago by creating some reforms to improve the status of women though these reforms do not seem to be practiced in Muslim society today. Though Islam as revealed to the prophet Mohammed is not oppressive to women its interpretation enacted in the family law, and every day living is patriarchal.

In fact the oppression of Muslim women is due to the conservative readings of Shariat which also include gender discriminating customary norms that are presented as god's immutable words. Muslim feminists trace the source of women's oppression to the same Shariah laws which interpret the divine laws wrongly. Further Islamic law is saturated with pro-patriarchal interpretations. Although the status of women improved during the time of the prophet it was only short lived Muslim masses do not look beyond Islam and they view it as complete way of life. The law of Divorce has become a tool in the hands of the husbands to oppress the Muslim women. The Muslim scholars are of the opinion that the Muslim Personal law as practiced under the Shariat Act had brought untold miseries to Muslims women and if Allah appears in person, he would roll his head in shame over the

Dilemma of Muslim women. India is a multicultural and multi religious society and its citizens are given an opportunity for their complete development irrespective of their sex, caste, religion or race by ensuring the various fundamental rights in part III of the constitution. In spite of constitutional assurances, the status of Muslim women has not improved because of the religious ordain with its conservative approach. The Muslim women could not benefit from the various welfare legislations since they are still governed by their own Islamic laws. The centuries old principles of Islam are

Property Rights of Muslim Women under the Customary Law

In pre-Islamic Arabia the law of inheritance was based on comradeship-in-arms and hence even wife and children were excluded from inheritance. In fact the law of inheritance was based on the principles of agnatic preference and exclusion of females. Thus a daughter or a sister or daughter's son or sister's son could not succeed to the property. It is evident from this that before the advent of Islam women were not only deprived of their right to inheritance but their very destiny was in the hands of her husband's clan or with her relatives. In the pre-Islamic society males enjoyed upper hand over females in matters related to inheritance. When a man lost his life, his heir would claim the right over the widow and marries her. After marriage, he denies her the right to claim the part of inheritance constituted by the dowry. He can also take the dowry and ask another man to marry her. Further fatherless children never inherit, instead they were mistreated and not looked after well and young girls would become victims of sexual abuse

Muslim Women's Right to Mehr

The inheritance rights of women under Islamic law can be understood best if they are examined in the larger context of property rights of women within a marriage. The law of marriage in a way is a law of property settlement rather than defining sexual morality. Though the Muslim law of inheritance

protects women's rights better than the law, in the matter of matrimonial law, Hindu law is more favorable to women than the Muslim law which permits Triple Talaq and Polygamy. However Islamic law is very progressive since it permits dissolution of marriage either by consent or by providing for irretrievable break down of marriage. Only in the latter half of the twentieth century the British Matrimonial Jurisprudence accepted the concept of divorce by mutual consent. This was included into Hindu law in 1976. The Divorce Act which governs Christian marriages recognized this concept only in 2001.

3. Property rights of Christian

An analysis of the property rights of Christian Hindu and Muslim women point towards the fact that the status of Christian women is the most vulnerable as far as property rights are concerned. The Christian women are deprived of equal rights to parental property because of the continuance of the dowry system under Section 28 of the repealed Travancore Christian Succession Act 1916 which provided that the male shares shall be entitled to have the whole of the interstate's property divided equally among themselves subject to the claims of the daughter for streedhanam. Section 29 further provides, the female heirs or the descendants of the deceased female heirs will be entitled to share in the intestate's property only in the absence of the male heirs. These two rules of succession are still being continued in the Catholic community of Kottayam District and Kanyakumari District even after its repeal following the verdict of the Supreme Court in Mary Roy v. State of Kerala.

Further, the Christian families with ancestral properties still continue the custom of partitioning the properties among the members of the family. Here also a daughter who has been given streedhanam will be excluded from partition. It is to be noted here that the father / testator can disinherit a daughter through a Will also. These two practices are still unabashedly going on in the Catholic families. Meanwhile the Hindu personal law has undergone changes through a continuous process of codification. The state is continuing its neglect towards the Christian women who are still being governed by the law of Israel, religious precepts and customary practices that are repugnant to the constitutional mandate of non-discrimination and the principles of non-discrimination enunciated by CEDAW. It can be rightly added that Christian women are suffering from double discrimination, the discrimination on the basis of religion and discrimination on the basis of sex.

The Constitution of India recognizes equality of status and in fact provides for certain provisions under the chapter on fundamental rights more favourable to women but in actual practice they are observed more in breach than in Compliance This is absolutely true in the case of Christian women. It is worth quoting here a passage cited by Mr. Fali Nariman referring to the U.S. Constitution Congress woman said: "We the people" a very eloquent beginning. But when that document was included on 17.09.1787, it was not included in that 'we the people' I feel somehow for many years that George Washington and Alexander Amialton just left me out by mistake. But I realize that it is through the process of interpretation and court decision that I have been finally included in 'we the people'¹⁴⁸. The Christian women will acquire equal status only if she is freed from Church influences, patriarchal family system, of restricting the practice of execution of release deeds and testamentary capacity of the testator An analysis of the inheritance rights of the Christian, Hindu and Muslim women brings forth the reality that only the Christian women alone are deprived of the right to inherit a share of the ancestral property. This is the mere callousness of the Legislature. The international Conventions on women always focus on women's inheritance rights. However neither the community nor the Church would ever take any step to plug the existing loopholes in the Indian Succession Act 1925 because they are up in arms against women inheriting property. The Law Commission also has been enthusiastic in the reforms of Hindu Succession Law. No such enthusiasm is shown in reforming Christian Personal Law. In tune with the Law Commissions recommendations, even the Government has made an effort to make reformatory laws in Hindu Succession, though it is not implemented effectively. To make matters worse Christian women are still being controlled by the Church through its Canon laws which ensure women's

subjugation and subordinate status.

Uniform Law For Christians

After going through the different Succession laws in the State the Commission arrived at the following conclusions.(1)The continuance of different Laws for different regions will be against the spirit of Art.14 of the Constitution (2) need for a uniform law of intestate succession for the Christians in Kerala. (3)The Commission also pointed out the attempt made by the Kerala Government to unify intestate succession through the Christian succession Act 1958. The Christian Succession Act of Travancore and Cochin provide for intestate Succession among Christians in the Travancore and Cochin areas of the State respectively.

While part B of the Indian Succession Act 1925 dealing with intestate succession applies to Christians in the Malabar area. Christian men supported by the Church opposed any change in the inheritance law of Christians in Kerala and also the implementation of 1925 Act from the year Travancore joined Union of India. It was conceded necessary to have a uniform law to govern the intestate succession among Christians for the whole of the State and for that purpose to repeal the Travancore and Cochin Christian Succession Acts. All the efforts of the Indian Law Commission to reform the Travancore Christian Succession Laws in order to bring about a uniform law for Christians failed due to lack of support from the Government and the Christian community. The conflicting decisions of the Travancore Cochin and Madras High Courts also pointed towards the fact that the Indian Succession Act 1925 was not applicable to the Travancore Christians.

4. Parsi laws of inheritance

Inheritance right of women in Parsi

Property rights of Christian, Parsi (Zoroastrians) women:The laws of succession for Christians and Parsis are laid down in the Indian Succession Act, 1925 (ISA). Sections 31 to 49 deal with Christian Succession and Sections 50 to 56 deal with Succession for Parsis.

Parsi women's right to property:

Prima facie the property rights of the Parsis are quite gender just. Basically, a Parsi widow and all her children, both sons and daughters, irrespective of their marital status, get equal shares in the property of the intestate while each parent, both father and mother, get half of the share of each child. However, on a closer look there are anomalies: for example, a widow of a predeceased son who died issueless gets no share at all.

We can easily segregate the laws of non-testamentary or intestate succession and inheritance as would be applicable to Hindus, Sikhs, Jains and Buddhist and with Parsis, Christians and Jews with that of Muslims and with persons of inter faith marriages. Laws of succession applicable to Hindus, Sikhs, Jains and Buddhist; for the non-testamentary or intestate succession/inheritance, the governing law is the Hindu Succession Act, 1956.Laws of succession applicable to Parsis; for the intestate succession the governing law is the Indian Succession Act, 1925 specifically under section 50 to 56 of the Indian Succession Act, 1925.

Parsi laws of inheritance: Despite shrinking numbers, Parsis still penalise those who marry outside their community – and it's allowed. A non-Parsi woman who is either a wife or widow of a Parsi cannot inherit. Their children still can, although those born to a Parsi woman married to a non-Parsi man are not considered part of the community.

Prima facie the property rights of the Parsis are quite gender just. Section 50 to 56 of the Indian Succession Act 1925 specifically deals with Parsi intestate. There is no distinction for the purpose of intestate succession between those who are actually born during the lifetime of the deceased person and those who were only conceived in the womb. Basically, a Parsi widow and her children irrespective of their gender and marital status gets equal share in the property of the intestate while father and

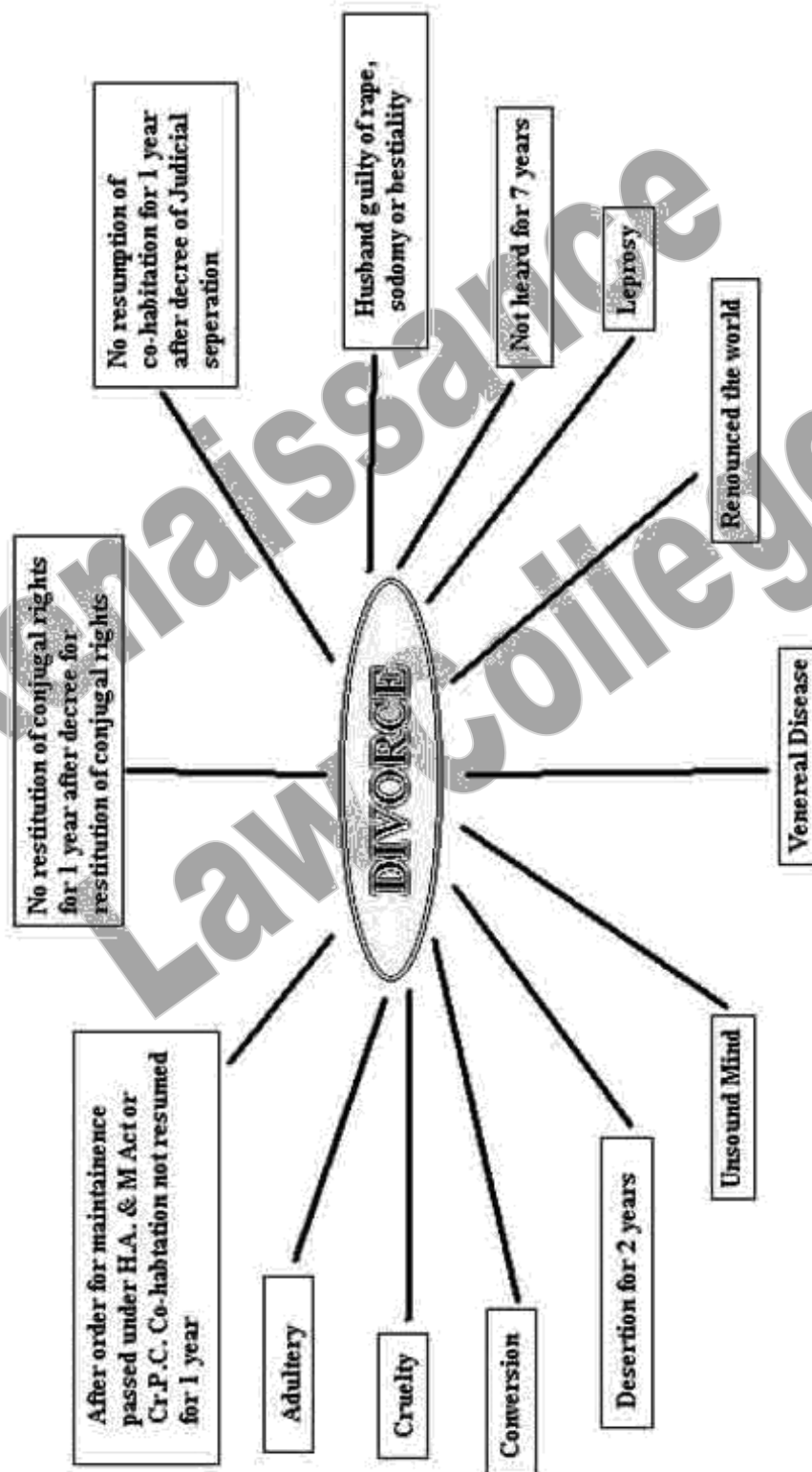
mother get half of the share of each child. For instance if a person dies living behind his father, mother, widow, son and daughter then the property will be divided into eight equal parts and widow, son and daughter will be entitled to have 2/8th of the share whereas father and mother will be entitled to have 1/8th of the share.

If the intestate leaves widower but no widow or widower of a lineal descendant, the widow or widower shall take $\frac{1}{2}$ of the property. If an intestate leave behind a widower and widow or widower of any lineal descendent both of them shall receive 1/3rd of the property each and in absence of widower the widower of the lineal descendents shall receive 2/3rd of the property in equal share. The residue after the above division shall be distributed in the following order:

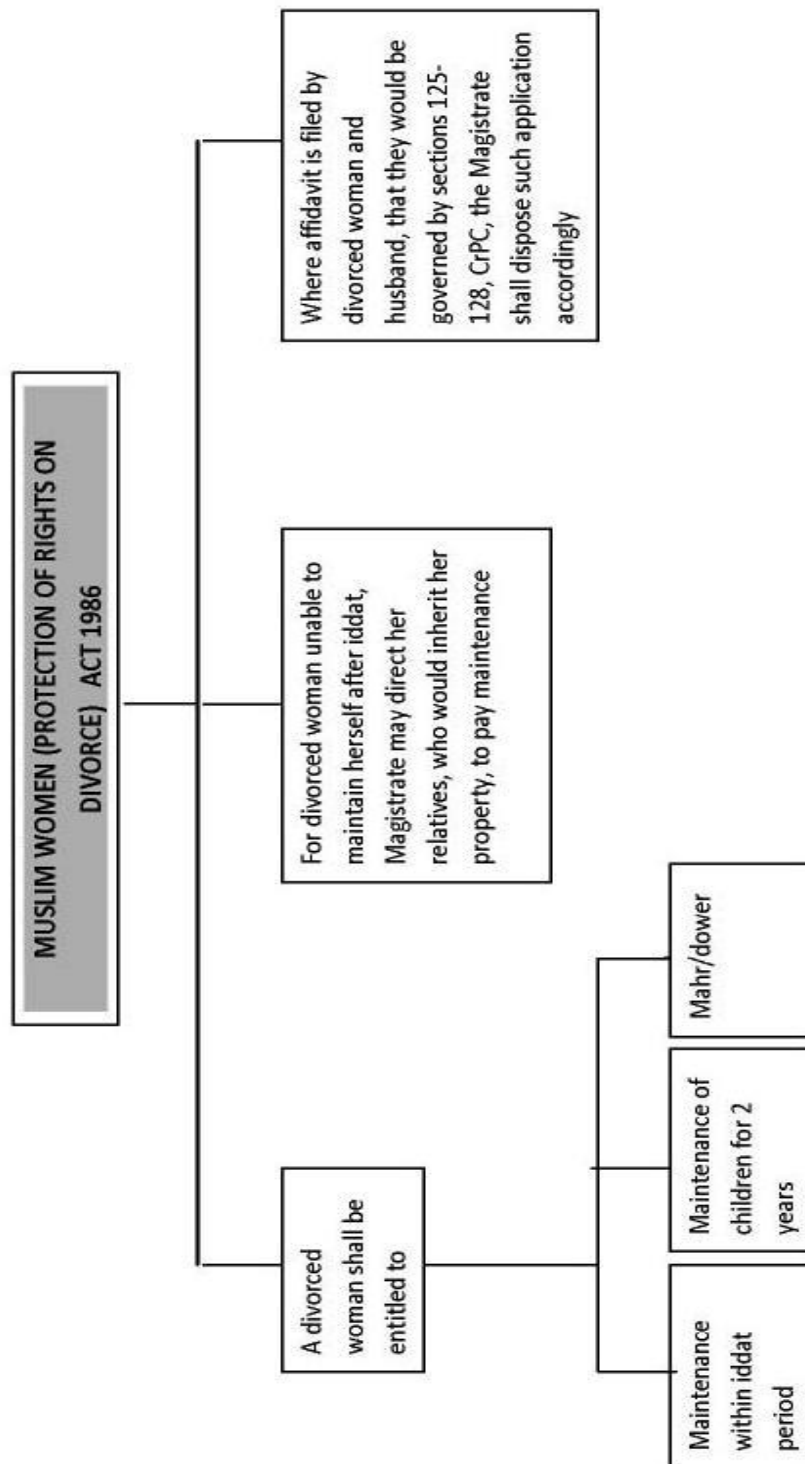
- (1) Father and mother.
- (2) Brothers and sisters (other than half brothers and sisters) and lineal descendants of such of them as shall have predeceased the intestate.
- (3) Paternal and maternal grandparents.
- (4) Children of paternal and maternal grandparents and the lineal descendants of such of them as have predeceased the intestate.
- (5) Paternal and maternal grandparents' parents.
- (6) Paternal and maternal grandparents' parents' children and the lineal descendants of such of them as have predeceased the intestate.

UNIT IV
MATRIMONIAL RIGHTS AND ITS CONSEQUENCES

Hindu Divorce Ground



Muslim divorce ground



1. Matrimonial property

The word "Stridhan" is derived from the words "stri" meaning woman and "dhana" meaning property. Essentially a word and concept, which comes down centuries from the Hindu smritis but has today, permeated all forms of marriages in all castes and religions.

The existence of Stridhan is an ingrained part of Indian culture from times of yore. As male dominated as the society may be, the existence of the custom of 'bride price' indicates that women understood the importance of financial independence and safeguarding their interests long before the feminist movement made it popular to do so.

Mitakshara II ix, 2 defines that stridhan means woman's property. In the entire history of Hindu Law, woman's rights to hold and dispose of property has been recognized.

The Dayabhaga School doesn't recognize gifts of immovable property by husband as stridhan. Under all the schools of Hindu Law payments made to a Hindu female in lump sum or periodically for her maintenance and all the arrears of such maintenance constitute stridhan. Similarly, all movable or immovable properties transferred to her by way of an absolute gift in lieu of maintenance constitute her stridhan. Section 27 of the Hindu Marriage Act, 1955 says that in any proceeding under this Act, the Court may make such provisions in the decree as it thinks just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife. Refusal by husband to return the gift items given to wife at the time of marriage makes the husband liable for prosecution. The section does not bar the right of the aggrieved person to file criminal complaint under Section 406 I.P.C., if property belonging to the complainant is criminally misappropriated by the accused. The section empowers a Court while deciding a matrimonial dispute to also pass a decree in respect of property, which may jointly belong to both the husband and wife. This section at best provides a civil remedy to an aggrieved wife and does not in any way take away her right to file a criminal complaint if the property belonging to her is criminally misappropriated by her husband.

women's estate

The next type of property was women's estate and the following properties were included in it- Property obtained by inheritance- a Hindu female may inherit property from a male or a female. She may inherit it from her parent's side or from husband's side. The Privy Council in *Bhagwande v Maya Bae* held that property inherited by a female from male is not her Stridhan but woman's estate. A similar view was taken with respect to property inherited from females.

Share obtained on partition- In *Devi Prasad v Mahadeo* the law was laid down that share obtained on partition was women's estate.

The characteristic feature of women's estate was that a female was a limited owner of the property. They were two limitations that were placed on her estate-

- She could not ordinarily alienate the corpus
- On her death the property devolved upon the next heir of the last full owner

The Privy Council observed in *Janki v Narayanaswami* that: "Women's right is of the nature of right of property, her position is that of owner, her powers in that character are however limited... So long as she is alive, no has vested interest in succession."

With respect to these properties, the woman had power to

- Management
- Alienation
- Surrender

Power of Management: The woman had full power to management. She was the sole owner. She alone was entitled to the possession of the entire estate and she alone was entitled to its entire income. Her power of spending the income was absolute. She need not save but if she saved, it shall be her stridhan. She alone could sue on behalf of the estate and she alone could be sued in respect of it. She continued to be its owner until the forfeiture of estate, by her re-marriage, adoption, death or surrender.

- **Power of Alienation:** With respect to alienation, the women could alienate her property under the following conditions -
- Legal necessity i.e for her own need and for the need of dependents of the last full owner

- For the benefit of the estate

For the discharge of indispensable religious duties such as marriage of daughters, funeral rites of her husband etc. She could alienate for the benefit of the last full owner but not for her own spiritual benefit. She could alienate for religious acts that are not essential or obligatory but are still pious observances which conduce to the bliss of her deceased husband's soul.

Power to Surrender: the law for this was laid down by the Supreme Court in *Natwar v Dadu*. It said that there were three conditions of surrender

- It must be for the entire estate though a small portion could remain for her maintenance
- Surrender must be made in favour of reversioners.
- Surrender must be bonafide and not device of dividing the estate among the reversioners

Muslims law

Muslims in India are governed by the Muslim Personal Law (Shariat) Application Act of 1937, which defines the scope of Muslim personal law as including all affairs regarding succession, marriage, dissolution of marriage, guardianship, and property rights. Muslim personal law is largely uncodified, and legal decisions are made by courts on the basis of the Qur'an and hadith. Organizations like the All India Muslim Personal Law Board (AIMPLB) and Jamiat Ulema-e-Hind (JUH) see themselves as spokespersons for the Muslim community, and lobby the government in cases where they believe Muslim law is being impinged upon.

Women's groups have criticized the AIMPLB and JUH for their retrograde views regarding women's rights.

India is one of the only countries where Muslim women are rarely allowed to pray in mosques and have limited legal recourse (including receiving alimony) if their husbands divorce them through triple talaq. Marriages are not required to be registered, and sometimes made without women's consent. Women's groups have argued that since personal laws are uncodified, customary practices have superseded Qur'anic law.

Christian

Grounds for Divorce ?

The following are the grounds for divorce as given in section 10(1)&(2) of the Divorce Act, 1869 and as amended in 2001.

- a. Adultery.
- b. Conversion to another religion.
- c. Incurable of unsound mind continuously for a period of two years or more.
- d. Suffering from incurable form of leprosy.
- e. Suffering from venereal disease in communicable form.
- f. Not heard of for a period of seven years.
- g. Refusal to consummate the marriage.
- h. Has failed to comply with a decree for restitution of conjugal rights for a period of two years.

Suffering from venereal disease in communicable form	Yes	Yes	Yes- for 2 years	Yes- for 2 years	Yes	Yes
Suffering from virulent and incurable form of Leprosy	Yes	Yes	Yes- should have been suffering for 2 years	Yes- should have been suffering for 2 years	Yes	Yes
Person not been heard of as being alive for 7 years or more	Yes	Yes	Yes	Yes	Yes	Yes
Wilfully refuses to consummate marriage and marriage has not been consummated			Yes	Yes		
Husband guilty of rape		Yes		Yes		Yes
Order of maintenance has been passed against husband and there has been no cohabitation between husband and wife after the order was passed		Yes-if no cohabitation after 1 year of order being passed				Yes-if no cohabitation after 1 year of order being passed
No cohabitation even after an order of judicial separation has been passed	Yes-if no cohabitation even after 1 year of order being passed	Yes-if no cohabitation even after 1 year of order being passed			Yes-if no cohabitation even after 1 year of order being passed	Yes-if no cohabitation even after 1 year of order being passed
No restitution of	Yes-if no	Yes-if no	Yes-if no	Yes-if no	Yes-if no	Yes-if no

conjugal rights even after an order being passed	restitution even after 1 year of order being passed	restitution even after 1 year of order being passed	restitution even after 2 years of order being passed	restitution even after 2 years of order being passed	cohabitation even after 1 year of order being passed	cohabitation even after 1 year of order being passed
Conversion to another religion	Yes	Yes	Yes (If Christian converts to another religion)	Yes (If Christian converts to another religion)		

- i. Desertion.
- j. Cruelty.

Comparative Chart on grounds of divorce

Grounds for divorce	Hindu Law		Christian Law		Special Marriage Act	
	Husband	Wife	Husband	Wife	Husband	Wife
Adultery	Yes	Yes	Yes	Yes	Yes	Yes
Desertion for a period of 2 years	Yes	Yes	Yes	Yes	Yes	Yes
Imprisonment for 7 years or more					Yes	Yes
Cruelty	Yes	Yes	Yes	Yes	Yes	Yes
Incurably of unsound mind or has been suffering continuously or intermittently from mental disorder	Yes	Yes	Yes- for a continuous period of two years before presentation of petition	Yes- for a continuous period of two years before presentation of petition	Yes	Yes

Has renounced the world	Yes	Yes				
Divorce by mutual consent	Both husband and wife can mutually agree to get a divorce and file a petition in the District Court or Family Court. No petition for divorce can be filed within 1 year of marriage	Both husband and wife can mutually agree to get a divorce and file a petition in the District Court or Family Court on the grounds that they have been living separately for 2 years and they have mutually agreed that the marriage should be dissolved	Both husband and wife can mutually agree to get a divorce and file a petition in the District Court or Family Court. No petition for divorce can be filed within 1 year of marriage			

According to the Indian Succession Act, 1925, a Christian widow is entitled to one-third of her husband's property.

- All children get an equal share in the remaining property.
- Children of pre-deceased sons and daughters get their parents share of the property.
- In case there are no children, the widow gets Rs.5, 000 along with half the share of the property left after deducting that amount.
- A child in the womb is also entitled to a share of the property.
- Any money earned by a Christian woman is her own property. Nobody can take it away from her. She has the right to will away or gift away her own money, jewellery and other property to anybody she wants.
- Even if a Christian woman's father spends money on gifts at her marriage, she is still entitled to a share in her father's property

2. Separation of property

Hindu marriages

The provisions of the Hindu Marriage Act (1955) apply to couples married under Hindu law and seeking to obtain a divorce, whereas the Parsis in India are governed by the Parsi Marriage and Divorce Act (1936) and the Parsi Marriage and Divorce (Amendment) Act (1988). Inter-community and civil marriages and divorces are governed by provisions of the Special Marriage Act, 1956 and Special

Marriage (Amendment) Act, 1970. The rules relating to alimony, custody of children etc are uniform for both religions.

Thus, if the court finds that either partner has no income which is independent and sufficient for his/her support and/or to pay for the divorce proceedings, then on the petition of the said partner, the court may order the other party to meet his/her legal expenses and also provide a monthly sum to the partner till such time as the divorce case is pending. The court will, however, take into consideration the petitioner's own income, as well as the income of the other party and only sanction a sum which is thought reasonable. This is known as Maintenance Pendente Lite.

At the time of passing an order or decree for divorce, a court may grant alimony to either spouse for his or her maintenance and support. This may be done by the court on its own while exercising its jurisdiction, or may be done at a later stage if an application for that purpose is made by either the wife or the husband. The court may order the respondent (the partner other than the one making the application) to pay a certain sum of money to the applicant. It may be a lump sum paid all at one go or it may be a monthly or periodical amount to be payable over a term not exceeding the life of the applicant. While doing so, the court will take into consideration the following:

- The income and property of the respondent
- The income and property of the applicant
- The conduct of both parties and other circumstances of that particular matter

If the court feels that the respondent may avoid making the payments to the applicant, then the court may secure such payment by a charge against any immovable property of the respondent.

Also, if the court feels that there has been any change in the circumstances of either party at any time after it passes an order for alimony, it may at the request of either party alter or nullify the order in whichever manner it may feel necessary and may deem fit. If, for example, the party who has made an application for alimony and has obtained an order in his/her favour remarries or is found guilty of being unfaithful to his/her spouse, the court can modify the order and the amount of money he/ she is entitled to.

With regards to custody, maintenance and education of minor children in any proceedings under this Act, the court from time to time passes interim orders and makes such provisions in its decree as it deems just. The court will consistently try and take into consideration, wherever possible, the wishes of the children. The court will at all times take into account the wellbeing and security and comfort of the child. However, it is safe to say that in India, courts prefer to grant custody of minors to the mother unless they find her incapable/ unfit of looking to the wellbeing of the child.

Any property belonging jointly to the husband and wife shall be disposed off properly by the court. In case of property, shares, fixed deposits or any investments, it is better for couples to deal with all finances jointly and to make them accessible to both. Both spouses should be aware of all monthly income and expenses and try and keep everything in joint names.

Muslim marriages

The Muslim Women (Protection of Rights on Divorce) Act (1986) is the law which governs Muslim women filing for divorce and the matters incidental thereto. Under this act, a Muslim women is entitled to Mahr. Under Islamic law, Mahr is a gift (usually a sum of money) given by the groom to the bride upon their marriage. It is considered to be a form of appreciation and also acts as a guarantee for a woman. The Mahr is given to the wife in parts: once at the time of marriage, and later on if she is widowed or divorced. The amount of Mahr differs from one couple to another and may also depend upon the social status of the bride. Thus, legally, a Muslim woman in the midst of a divorce is entitled to her part of Mahr. The court, however, also takes into consideration the following:

- The needs of the divorced woman
- The standard of life enjoyed by her during her marriage
- The means of her former husband etc

Besides Mahr, the wife is also entitled to maintenance paid to her by her husband during her period of Iddat (Iddat is a particular amount of time after divorce that a Muslim woman must allow to lapse before she can remarry. She cannot remarry before that period is complete; it is usually three menstrual cycles or three lunar months).

With regards to maintenance for children, a Muslim wife is also entitled to a reasonable and fair amount of money from her husband towards maintenance of her children born both before and after her divorce. This maintenance has to be paid by the former husband for a period of two years from the respective dates of birth of each child.

The Muslim Women (Protection of Rights on Divorce) Act (1986) also provides for a Muslim woman to be entitled to all properties given to her before or at the time of marriage or even after her marriage by relatives, friends or her husband.

To sum things up, this Act only entitles a divorced Muslim woman to get maintenance from her husband during her period of Iddat, after which he is not responsible for her maintenance. However, if the court is satisfied that a divorced woman has not re-married and is unable to maintain herself after the Iddat period, it may order her children or, if she is childless, her parents to pay her maintenance which it deems just and fit. It may also order such relatives of the divorced woman who would be entitled to her property after her death according to the Muslim law to pay her maintenance which is reasonable and fair. Again, here the standard of life enjoyed by the woman during her marriage and the financial means of her relatives come into play.

For the woman who has no family and no relatives and is unable to support herself, the court may direct the State Wakf Board established under Section 9 of the Wakf Act, 1954 or under any other law in force in a State, functioning in the area in which the woman resides, to pay such maintenance as is determined.

Christian marriages

The provisions of the Indian Divorce Act 1986 govern the process of dissolution of marriage for Christians. Under this act, a husband who is petitioning for dissolution of marriage or for judicial separation has the right to claim damages from any third party on the grounds that the said party has committed adultery with his wife. The court may direct the manner in which the damages may be paid. However, it is the onus of the aggrieved husband to prove that such adultery has been committed. If the 'other man' in this case proves in court that the wife was not living with her husband at the time of adultery or he had reason to believe that she was not a married woman, he shall be exempt by the court from paying any costs.

A petition for Alimony Pendente Lite under the provisions of this act can be made by the wife and the court, if satisfied, may order the husband to make payments to the wife during the course of the impending proceedings as it deems just. However, in no case can the amount of Alimony Pendente Lite exceed one fifth of the husband's average net income for the next three years preceding the date of the order.

When the court passes a decree absolutely declaring a marriage to be dissolved or a decree of judicial separation obtained by the wife, it shall order the husband to pay the wife a certain sum of money for her maintenance and upkeep. This sum may be a gross amount or lump sum or it may be a certain amount paid annually till her death. This amount is alimony and just like for Hindus and Parsis, in this case too the court shall take all factors into consideration before deciding a sum.

Before passing any decree for divorce, the court will also enquire about existence of prenuptial and postnuptial settlements made by parties whose marriage is the subject of the decree. It will then make such an order with regards to the property as it deems fit, either in favour of the wife or husband or children or of both -- but the court shall not pass any order for the benefit of either parent if it is at the expense of the children.

The rules for custody of children are the same as those provided under the Hindu and Parsi Marriage Acts.

Everything discussed above is in accordance to Indian law. However, things don't always work out according to the law. It is necessary for any party applying for alimony (Hindu law states that even an earning wife may have to provide alimony to the non-earning husband) to prove that the other spouse has the capacity to make the payments from his or her income. So often, when divorce battles are acrimonious and bitter, couples do anything in their power to hide assets and income. Suddenly, a booming business will run into losses and assets may be sold or disposed off quickly.

With regards to property, Indian laws do not recognise common property. Like in the West, where a wife gets half of everything that a husband owns (including property), in India, unfortunately, that is not the case. The property is considered to belong to that person in whose name it is bought even if it has been acquired during the course of marriage. This means that even if a earning wife pays for a certain property from her own hard-earned money and it is in the name of her husband, there is no way to prove during divorce proceedings that it rightfully belongs to her. That is because the law in India does not recognise the right of any person to a part of the property bought during the course of marriage, unless proved that it has been paid for by the said person.

Marriages are made in heaven, they say and each partner is an equal in a marriage. It is therefore imperative that each partner be treated equally during the divorce proceedings as well.

3. Maintenance of different type of property

Laws of Maintenance under different personal laws in India can be classified into four heads:

- a. Maintenance under Hindu Law.
- b. Maintenance under Muslim Law.
- c. Maintenance under Christian Law.
- d. Maintenance under Parsi Law.
- e. Maintenance under Code of Criminal Procedure 1973.

a. Maintenance under Hindu Law

The relief of maintenance is considered an ancillary relief and is available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc. Further, under matrimonial laws if the husband is ready to cohabit with the wife, generally, the claim of wife is defeated. However, the right of a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief has been recognised in Hindu law alone. A Hindu wife is entitled to reside separately from her husband without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956. The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma.

(i) Maintenance of Wife:

Under S.24 of Hindu Marriage Act, 1955 (herein after mentioned as HM Act), either the wife or husband can apply for interim maintenance. The basis of the claim for interim maintenance is that the claimant has no independent income of his/her own to support himself/herself. The provision is silent on the quantum of maintenance and it is upon the discretion of the court to determine the quantum. Similarly, maintenance pendente lite is to be provided to the claimant who does not have an independent income and the financial need of litigation expenses has to be provided by the other spouse.

The interim maintenance is payable from the date of presentation of the petition till the date of dismissal of the suit or passing of the decree. Interim maintenance is supposed to meet the immediate needs of the petitioner. And maintenance pendente lite is for providing the litigation expenses to the claimant.

S. 3(b)(i) of Hindu Adoption and Maintenance Act, 1956(herein after mentioned as HAM ACT) defines maintenance as "provision for food, clothing, residence, education, and medical attendance and treatment." In the case of unmarried daughter, it also includes her marriage expenses. The provisions for permanent maintenance are present in all the personal laws and are substantively similar. However there are some differences between the personal laws.

Grounds for award of maintenance:

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favour of the wife, maintenance is granted. These grounds are as follows:-

- a. The husband has deserted her or has willfully neglected her;
- b. The husband has treated her with cruelty;
- c. The husband is suffering from virulent form of leprosy/venereal diseases or any other infectious disease;
- d. The husband has any other wife living;
- e. The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
- f. The husband has ceased to a Hindu by conversion to any other religion;
- g. Any other cause justifying her separate living;

Quantum of Maintenance:

The means and capacity of a person against whom the award has to be made should be taken into consideration for determining the quantum of maintenance. In fact, in case of the husband, it is not only the actual earning, but also his potential earning capacity, which must be considered i.e. there is a presumption that every able-bodied person has a capacity to earn and maintain his wife. The income of the husband is a significant factor to be considered by the court in fixing the quantum of maintenance. It is disposable income and not the gross income, which is to be considered. Section 23(2) of HAM ACT states the factors to be considered in determining the amount of maintenance payable to the wife, children and aged parents, and they are as follows – the position of and status of the parties, the reasonable wants of the claimant, the claimant if living separately is justified or not, the income of the claimant and the value of the claimant's property and the number of persons entitled to maintenance under the Act.

Even if one of these grounds exists in favour of the wife, she will not be entitled to relief if she has indulged in adulterous relationship or has converted herself into any other religion thereby ceasing to be a Hindu. It is also important to note here that in order to be entitled for the relief, the marriage must be a valid marriage. In other words, if the marriage is illegal then the matrimonial relationship between the husband and wife is non-existent and therefore no right of maintenance accrues to wife. However, thanks to judicial activism, in particular cases the presumption of marriage is given more weight age and the bars to maintenance are removed.

b. Maintenance under Muslim Personal Law

“All those things which are necessary to support of life, such as food, clothes and lodging; many confine too solely to food.” “Nafaqa literally means which a man spends over his children; in law it means feeding, clothing and lodging; in common use it signifies food.” “Maintenance comprehends food, raiment, lodging, though in common parlance it is limited to first.”

The main principles of maintenance may be recounted thus: (i) A person is entitled to maintenance if he has no property, (ii) is related to obligor in prohibited degrees, or is the wife or child, and (iii) the obligor is in position to support him. The obligation of maintenance is also hedged by the factor of their economic condition.

Persons entitled to maintenance:

- (i) Maintenance of Wife
- (ii) .Maintenance of Children
- (iii) Maintenance of Parents, and
- (iv) Other relations

(i) Maintenance of Wife:

It is incumbent on a husband to maintain his wife, whether she is Muslim or Kitabiyyah, poor or rich, enjoyed or un enjoyed, young or old. However the wife is too young for matrimonial intercourse she has no right to maintenance from her husband, whether she is living in his house or with her parents.

The husband is bound to maintain his wife so long as she is faithful to him and obeys his reasonable orders. It is decided in an interesting case by Strachy and Badruddin Tyabji, JJ., that disobedient wife need not to be maintained. Strachy, J., observed:

“...the husband’s duty to maintain his wife is conditional on her obedience and he is not bound to maintain her if she is disobeys him by refusing to live with him or otherwise.[18] Only paid occasional visits to husband house, staying for a night or so returning on occasion to mother’s house... I am clearly of the opinion that in such circumstances the Muhammadan husband is not bound to give his wife separate maintenance...”

To some effect the observations of Tyabji, J., :

“...it is impossible to hold that a Mussulman wife defying her husband, refusing to live with him, and bringing scandalous charges against him, can yet claim to be maintained separately at the expenses of her husband.”

Where the marriage is valid and the wife is capable to render marital intercourse it’s the husband’s duty to maintain his wife even though she may have means to maintain herself. But if she unjustifiably refuses to cohabit with her husband then she loses her right for maintenance. The right of maintenance would also be lost if the wife refuses to obey the reasonable commands of the Husband but not so if disobedience is justified by circumstances or if she is forced to leave husband’s house on account of cruelty, so that of the husband refuses to maintain his wife without any lawful reasons/causes the wife may sue him for maintenance. She is not however entitled to past maintenance. Maintenance is payable from the date of the decree unless the claim is based on specific agreement.

Where a wife is turned out or ill treated so as to make her impossible to stay or live together with her husband, or where the breach between the wife and husband is irremediable she is entitled to maintenance by living separate from him whether the question arises u/s. 125 of the Code of Criminal Procedure 1973 (corresponding section. 488 of the Code of Criminal Procedure 1998) or in a suit for restitution of conjugal life. To summarise, the wife loses the right to maintenance in the following circumstances:-

- i. She is minor, incapable of consummation.
- ii. Refuse free access to the husband at all reasonable times.
- iii. Is disobedient.
- iv. Never visited his house.
- v. Refuses to cohabit with him without reasonable excuse.
- vi. Abandon conjugal home without reasonable reasons.
- vii. Deserts him.
- viii. Elopes with another person.

The husband and wife or their guardian may enter into agreement whereby the wife is entitled to recover maintenance from her husband, on the happening of some special event such as ill-treatment, disagreement, husband’s second marriage etc. but the agreement in the marriage contract that the wife would not be entitled to maintenance is void. The key consideration is that the agreement should not be opposed to the public policy and Muslim Law.

An agreement between a Muslim and his first wife, made after his marriage with a second wife, providing for certain maintenance for her if she could not in future get on with the second wife, was held not void on the ground of the public policy.

Followings are the valid conditions for an agreement:

- i. If the husband treats the wife with cruelty then the wife has a right to separate residence and maintained to meet it.
- ii. If he brings subsequent wife and the previous wife is unable to with her, she will get maintenance allowance to live separately or even at her father's house.
- iii. If he brings his other wife to the matrimonial home, she will reside at her father's home and he will give her maintenance. This view was reiterated by the Karnataka High Court.
- iv. In case of disagreement with each other, he will give her maintenance for her separate residence.

After divorce the Mahomedan wife is entitled to maintenance during the time period of Iddat and also for the time, if any, that elapsed after the expiry of the period of Iddat and her receiving notice of Talak. After expiry of the period Iddat the enforceability of the order of maintenance ceases.

The wife is entitled to sue for maintenance at her normal place of residence at the time of divorce and the place where she receives the notice thereof. Suit by divorced for Hiba-jewels lies where the wife resides.

A widow is not entitled to maintenance out of the estate of her late husband in addition to what she is entitled to by inheritance or under his will.

c. Maintenance under Christian Law

A Christian woman can claim maintenance from her spouse through criminal proceeding or/and civil proceeding. Interested parties may pursue both criminal and civil proceedings, simultaneously, as there is no legal bar to it. In criminal proceedings, the religion of the parties does not matter at all, unlike in civil proceedings.

Section 36 of the Indian Divorce Act, 1869 (IDA) are similar to S.24 of HM ACT However S. 36 of IDA differs in the respect that the maintenance pendente lite and interim maintenance can only be claimed by the wife and not by the husband.

If a divorced Christian wife cannot support her in the post divorce period she need not worry as a remedy is in store for her in law. Under S.37 of the Indian Divorce Act, 1869, she can apply for alimony/maintenance in a civil court or High Court and, husband will be liable to pay her alimony such sum, as the court may order, till her lifetime. The Indian Divorce Act, 1869 which is only applicable to those persons who practice the Christianity religion inter alia governs maintenance rights of a Christian wife. The provisions are the same as those under the Parsi law and the same considerations are applied in granting maintenance, both alimony pendente lite and permanent maintenance. The provisions of the Indian Divorce Act, 1869, are produced herein covered under part IX -S.36 - S.38

The power of order monthly or weekly payments:

In every such case, the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the Court seems fit.

Under section 38 of the Indian Divorce Act, 1869, in all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

d. Maintenance under Parsi Law:

Parsi can claim maintenance from the spouse through criminal proceedings or/ and civil proceedings. Interested parties may pursue both criminal and civil proceedings, simultaneously as there is no legal bar to it. In the criminal proceedings the religion of the parties doesn't matter at all unlike the civil proceedings.

If the Husband refuses to pay maintenance, wife can inform the court that the Husband is refusing to pay maintenance even after the order of the court. The court can then sentence the Husband to imprisonment unless he agrees to pay. The Husband can be detained in the jail so long as he does not pay. The Parsi Marriage and Divorce Act, 1936 speaks about the right of wife to maintenance-both alimony pendente lite and permanent alimony. The maximum amount can be decreed by court as alimony during the time a matrimonial suit is pending in court is one-fifth of the husband's net income. In fixing the permanent maintenance, the court will determine what is just, bearing in mind the ability of husband, wife's own assets and conduct of the parties and this order will remain in force as long as wife remains chaste and unmarried. In case of pendente lite and interim maintenance sections 39 of the Parsi Marriage and Divorce Act, 1936 (PMDA) is similar to S.24 of HM ACT.

S.40. of Parsi Marriage and Divorce Act says that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.

The Court if it is satisfied it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just and if the Court is satisfied that the party in whose favour, an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.

e. Maintenance under Code of Criminal Procedure 1973.

S.125. Order for maintenance of wives, children and parents.-

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

It should be kept in view that the provision relating to maintenance under any personal law is distinct and separate. There is no conflict between the two provisions. A person may sue for maintenance under s.125 of Cr.P.C. If a person has already obtained maintenance order under his or her personal law, the magistrate while fixing the amount of maintenance may take that into consideration while fixing the quantum of maintenance under the Code. But he cannot be ousted of his jurisdiction. The basis of the relief, under the concerned section is the refusal or neglect to maintain his wife, children, father or mother by a person who has sufficient means to maintain them. The burden of proof is on him to show that he has no sufficient means to maintain and to provide maintenance.

Section 125 gives a statutory recognition to the moral, legal and fundamental duty of a man to maintain his wife, children and aged parents. Although this section also benefits a distressed father, the main thrust of this section is to assist women and children. Article 15(3) of the Indian constitution envisaged that the state can make special provision for woman and children. Section 125 is also along the lines of

Art.39 of the Indian Constitution that states that the State shall direct its policy towards ensuring that all citizens both men and women have equal access to means of livelihood and children and youths are given facilities opportunities in conditions of freedom and dignity.

At the time of enactment of this code section 125 is intended to be applicable to all irrespective of their personal Laws although maintenance is a Civil remedy yet it has been made a part of this Code to have a quick remedy and proceedings and S.125 is not a trail as non-payment of maintenance is not a criminal offence.

The word 'any person' u/s. 125 includes a person belongs to the undivided family although the proceedings strictly against the individual concern and not the undivided family. However, the Magistrate may take into consideration the joint family property is determining the amount of maintenance that should be payable by such person.; it also includes a person, a father, an adult son and a married daughter. But not include a mother or a wife or an unmarried daughter.

Refusal on neglect to maintain:

It has been held that the refusal or neglect to maintain may be expressed or implied, it may be by words or by conduct and action. Sometimes refusal or neglect may be constituted by something more, than more failure and omission. However, in relation to a person who has no volition of his or her own, like in case of a child mere failure or omission shall constitute refusal or neglect to maintain.

The term 'maintenance' has been generally interpreted to include food, clothing and lodging. However in recent time it has been held that any other requirements, i.e., necessary for a person to remain fit healthy and alive is also to be included within periphery of the term 'maintenance'.

Judicial Pronouncement:

Maintenance to Wife:

In Divyananda v. Jayarai, two Roman Catholic entered into Suyamaryadhai form of marriage and lived together as husband and wife for period of 5 months in the course of which the wife conceived a child. The Court rejected the petition of the woman as she was not a legally wedded wife. The Court held that being Christian, their marriage in accordance to Hindu customs without any conversion was void ab-initio and hence the woman was not a wife in the eye of law. As such the woman could not claim maintenance U/S. 125 of, although her children illegitimate would be entitled to maintenance U/S. 125.

In the case of K. Sivarama v. K. Bharathi, that any marriage in contravention of Section 5 & 11 of the Hindu Marriage Act, cannot be considered to be the valid marriage. Such a woman cannot recourse maintenance U/S. 25 of the Hindu Marriage Act for claiming maintenance.

In the case of Ambaram v. Reshambai, the court held that although the lot of women who entered into marriage without knowing about the subsistence of another marriage of her husband, although deserve a sympathetic treatment yet awarding of maintenance U/S. 25 & if any appeal is to be made, it should be made to the legislature.

In the case of Abdul Salim v. Nagima Begam, the Court held that the phrase 'unable to maintain herself' should not be interpreted to mean that a wife in order to claim maintenance should be an absolute destitute or should be in tattered clothes, or should be the first one out of the street to beg. The very fact is that she has no other means of her own other than that of her husband to maintain her adequately to entitle her to the right of maintenance.

Maintenance for Living Together

In S.P.S. Balasubramanyam v Suruttayan Andalli Padayachi & Ors. The Supreme Court allowed presumption of marriage u/s 114 of Evidence Act out of live-in relations and presumed that their children were legitimate. Hence, they are rightfully entitled to receive a share in ancestral property. In

the instance case, Matrimonial claim her brother Muthu Reddiars property who died unmarried and intestate.

In Abhijit Bhikaseeth Auti v. State Of Maharashtra and Others , the positive opinion in favour of live in relationship was also seconded by Maharashtra Government in October, 2008 when it accepted the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife.

4. Division of assets on divorce

The biggest change says – **“As per new Divorce law, Wife share in property would be 50% in all her husband’s residential properties, no matter what and in other properties, her share will be decided as per the court decision.”**

Wife share in property owned by husband would be 50%

Earlier, before this change – a women was entitled for a share in husband’s properties, but there was no quantum defined as per law, it would be any percentage depending on the case, but now with this suggested change, a women will enjoy equal sharing without any condition in all the residential properties owned by husband. But in this case, women will have to specifically apply for her share, she should be aware about this law about “50% share” .

A major change in this amendment is that this rule is applicable to all the properties of the husband acquired before and after the marriage, whereas as the earlier law made sure that the wife gets share only in those properties which are acquired by husband only after marriage. Now men stand to loose on this front, in-case things so sour with wife.

Husband & Wife joint holder’s in a residential property

You should be clear by now, what will happen in the case where a property is registered in the joint names of husband and wife. A lot of couple register a house in joint names, a lot of times both pay’s from their respective salaries, and in some cases only one party pays (generally husband). Imagine divorce happens – Who will get how much ? Women will keep her 50% part and she will also get half of her husband share in the house, so 75% wife and 25% husband.

Rights of women after divorce on other properties in India?

Apart from the mandatory 50% share in husband’s residential properties, the wife will also be entitled to get a share in other kind of properties, but the quantum is not set, as per the Bill, it will depend on “living standard of the wife”

Waiver of six months cooling period possible

As per the old Indian law which governed the division of assets for women after divorce, it was mandatory for husband and wife to spend at-least 6 months together before applying for divorce, but with this new amendment bill, there are provisions of waiving off the 6 months cool off period or lessen it, but only if both husband and wife wants it. Which means if one of the spouse wants to get divorce on an “urgent basis” , but other does not, it will not be possible. This is one of the major change in the bill and will help those couples who do not want to serve that “6 months” cool off period of living together.

Is this a anti-male law ?

A lot of groups have termed this change as anti-marriage and ant-male law and critically oppose it, they have termed it as a bill totally against males and illogical. The major issues with the amendment are as follows

- The bill talks about only the division of Husband Properties, but not wife’s properties. So in-case women is at fault, still she will get 50% share in husband property, but her share of property will not be divided.
- A major disappointment for men in this bill is that, even the “person at fault” can apply for getting the share of property, and the other party will have to respond to it. Generally as per old law’s when mutual consent was not there, the victim applies for the property share and the person who is the “bad person” has to respond to it. Now with his law change, wife can seek a divorce and ask for share in property.

- If wife and husband are living apart from many years, a wife can oppose the divorce on the grounds of financial hardship, but men can not! . This is called Irretrievable breakdown of marriage
- There are concern's raised like this law will encourage more divorce's are women can get hold of property easily for sure.

Now there are some serious concerns due to these changes. If a husband has one residential properties, old parents who are financial dependent on him and there is divorce between husband and wife, the wife could take 50% share, in which case the men will be left with 50% property, this seems very unjustified. What is the women already owned 2 more properties on her name? She has nothing to worry! .

One serious drawback of this law is that some men, who are undergoing a bad phase of marriage, may convert their residential properties into immovable assets, or just transfer it on other names to save themselves from parting away with 50% share in worst case.

UNIT 5
SOCIAL WELFARE LAWS FOR WOMEN AND LABOUR LEGISLATIONS

Labour law

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for indenturing workers became necessary. This was obviously labour legislation in order to protect the interests of British employers. Then came the Factories Act. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make India labour costlier the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile magnates of Manchester and Lancashire. Thus we received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfares the real motivation was undoubtedly protectionist. To date, India has ratified 39 International Labour Organization (ILO) conventions of which 37 are in force. Of the ILO's eight fundamental conventions, India has ratified four – Forced Labour 1930, Abolition of Forced Labour 1957, Equal Remuneration 1951, and Discrimination (employment and occupation) 1958.

Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. Apart from the Maternity Benefit Act, almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of an occupational hazard concerning the safety of women at workplaces, in 1997 the Supreme Court of India announced that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment Standing Orders Act 1946.

WOMEN LABOUR AND THE LAW

Women are known to work on farms, in road and housing construction, and of late, in factories manufacturing garments and electronic assembly plants. Skilled women workers also have been working in traditional village industries either as self employed or as paid workers. In hill areas, search for forest products including fuel wood engages a fairly large number of women. The majority of women work in the unorganized sector for low wages and at low levels of skills. The number of women workers during the last four decades has more than doubled from 40 million to 90 million. Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as laborers and cultivators.

Applicability of Labour laws for women

In addition to the Maternity Benefit Act, 1961 almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of

women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of occupational hazards concerning the safety of women at workplaces, in 1997 the Supreme Court of India in the case of Vishakha Vs. State of Rajasthan [(1997) 6 SCC 241] held that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment (Standing Orders) Act, 1946.

The Factories Act, 1948 has the following provisions of interest to women (Sections 19, 22(2), 27, 42(1)(b), 48, 66, 79(1) and 114.):

The Act prohibits women from being employed in cleaning; lubricating or adjusting certain machinery when it is in motion, if that would expose them to risk of injury. Women are also not allowed to work in the part of a factory where a cotton-opener is at work unless certain conditions are met.

Suitable sanitation facilities must be provided.

If more than 30 women are employed, the employer must provide a free crèche on the premises for children under six years of age. State governments may make rules governing these crèches, which may include requirements to provide clothes washing and changing facilities, child-feeding facilities and free milk and refreshments for the children.

Women cannot be exempted from the requirement that the maximum working day for adults is 9 hours, and cannot work in factories between the hours of 6am and 7 pm (unless the factory falls within a specific exemption, but in any case, not between the hours of 10 pm and 5 am.). In relation to women, there must not be a change of shifts except after a weekly or other holiday. However, the State governments can change these requirements in the fish curing and canning industries. Periods of absence on maternity leave are included in calculating periods of service for the purposes of annual leave.

GUIDELINES TO PREVENT SEXUAL HARASSMENT OF WORKING WOMEN

Sexual harassment is a serious criminal offense which can destroy human dignity and freedom. In an effort to promote the well being of all woman employees at the work place the following code of conduct has been prescribed :-

It shall be duty of the employer to prevent or deter the commission of any act of sexual harassment at the work place.

Sexual harassment will include such unwelcome sexually determined behavior by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as :-

- Eve-teasing
- Unsavoury remarks
- Jokes causing or likely to cause awkwardness or embarrassment
- Innuendos and taunts
- Gender based insults or sexist remarks
- Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls) and the like
- Touching or brushing against any part of the body and the like
- Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings.
- Forcible physical touch or molestation
- Physical confinement against one's will and any other act likely to violate one privacy and includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to person belonging to the other sex, only on the ground of sex.

Explanation :- Where any comment, act or conduct is committed against any person and such person has a reasonable apprehension that,

It can be humiliating and may constitute a health and safety problem, or

It is discriminatory, as for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or study, including or promotion or advancement or when it creates a hostile environment, or

It would result in adverse consequences if she does not consent to the conduct or raises any objection, it shall be deemed to be sexual harassment.

Eve-Teasing:-

Eve-teasing will include any person willfully and indecently exposing his person in such a manner as to be seen by other employees or use indecent language or behave indecently or in a disorderly manner in the work place. It will also include any word, gesture or act intended to insult the modesty of a woman by making any sound or gesture or exhibit any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such women or intrudes upon the privacy of a woman employee.

4. Sexual harassment of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her in a manner which prevents or impairs the employee's full utilization of employment benefits or opportunities. It also includes behaviour that covertly or overtly uses the power inherent in the status of the employer or the head of the institution or management to affect negatively an employee's work experience or career opportunities and/or to threaten, coerce or intimidate an employee to accept sexual advances or making employment decision affecting the individual or create an intimidating, hostile or offensive working environment. It shall be the duty of the employer to prevent or deter the committing of any act of sexual harassment at the work place.

All employers should take appropriate steps to prevent sexual harassment of any nature. Express prohibition of sexual harassment should be notified at the work place and also published for the general information of the employees and evaluated in an appropriate manner periodically. Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards women at the work place and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment in that organisation.

- Women employees should not be treated as sex objects.
- No male employee shall outrage or insult the modesty of a female employee at the work place.
- No male employee shall make any type of sexual advances to woman colleagues or woman subordinates.

The head of the organization shall constitute a Complaints Committee as specified in the Judgment of the Supreme Court, i.e., the Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels such Complaints Committee should involve a third party either a non-government organization or other body who is familiar with the issue of sexual harassment.

Conducting enquiry by the Complaints Committee:-

Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident.

The complaint shall contain all the material and relevant details concerning the alleged sexual harassment including the names of the contravenor and the complaint shall be addressed to the Complaints Committee. If the complainant feels that she cannot disclose her identity for any particular reason the complainant shall address the complaint to the head of the organisation and hand over the same in person or in a sealed cover. Upon receipt of such complaint the head of the organisation shall retain the original complaint with himself and send to the Complaints Committee a gist of the complaint

containing all material and relevant details other than the name of the complaint and other details which might disclose the identity of the complainant.

The Complaints Committee shall take immediate necessary action to cause an enquiry to be made discreetly or hold an enquiry, if necessary.

The Complaints Committee shall after examination of the complaint submit its recommendations to the head of the organisation recommending the penalty to be imposed. The head of the organisation, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being heard to the person complained against submit the case with the Committee's recommendations to the management.

The Management of the Organisation shall confirm with or without modification the penalty recommended after duly following the prescribed procedure.

Disciplinary Action:

Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

18. Worker's Initiative :

Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other appropriate fora and it should be affirmatively discussed in periodical employer-employee meetings.

19. Third Party harassment: Where sexual harassment occurs as a result of an act or omission by any third party or outsider the employer and the persons in charge shall take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

Safety/Health Measures

- Section 22(2) of the Factories Act, 1948 provides that no woman shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman to risk of injury from any moving part either of that machine or of any adjacent machinery.
- Section 27 of the Factories Act, 1948 prohibits employment of women in any part of a factory for pressing cotton in which a cotton opener is at work.

Prohibition of Night Work

- Section 66(1)(b) of the Factories Act, 1948 states that no woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m.
- Section 25 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 stipulates that no woman shall be required or allowed to work in any industrial premise except between 6 a.m. and 7 p.m.
- Section 46(1)(b) of the Mines Act, 1952 prohibits employment of women in any mine above ground except between the hours of 6 a.m. and 7 p.m.

Prohibition of Sub-terrain Work

- Section 46(1)(b) of the Mines Act, 1952 prohibits employment of women in any part of a mine which is below ground.

Maternity Benefit

- The Maternity Benefit Act, 1961 regulates the employment of women in certain establishments for certain periods before and after child-birth and provides maternity benefits. The Building and Other Constructions (Regulation of Employment and Conditions of Service) Act, 1996 provides for maternity benefit to female beneficiaries of the Welfare Fund.

Provisions for Separate Latrines and Urinals

Provision for separate latrines and urinals for female workers exist under the following:

- Rule 53 of the Contract Labour (Regulation and Abolition) Act, 1970.
- Section 19 of the Factories Act, 1948.

- Rule 42 of the Inter State Migrant Workmen (RECS) Central Rules, 1980.
- Section 20 of the Mines Act, 1952.
- Section 9 of the Plantations Labour Act, 1951.

Provisions for Separate Washing Facilities

Provision for separate washing facilities for female workers exists under the following:

- Section 57 of the Contract Labour (Regulation and Abolition) Act, 1970.
- Section 42 of the Factories Act.
- Section 43 of the Inter-State Migrant Workmen (RECS) Act, 1979.

Provision for Crèches

Provision for crèches exists under the following:

- Section 48 of the Factories Act, 1948.
- Section 44 of the Inter State Migrant Workmen (RECS) Act, 1979.
- Section 12 of the Plantations Labour Act, 1951.
- Section 14 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966.
- Section 35 of the Building and other Constructions (Regulation of Employment and Conditions of Service) Act, 1996.