



GENDER JUSTICE

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GENDER JUSTICE

- **UNIT-I Women in Pre-Independence India**
- **1. Social and legal inequality**

DEFINITION AND CONCEPT OF GENDER INEQUALITY

'Gender' is a socio-cultural term referring socially defined roles and behaviors assigned to 'males' and 'females' in a given society; whereas, the term 'sex' is a biological and physiological phenomenon which defines man and woman. In its social, historical and cultural aspects, gender is a function of power relationship between men and women where men are considered superior to women. Therefore, gender may be understood as a man-made concept, while 'sex' is natural or biological characteristics of human beings.

Gender Inequality, in simple words, may be defined as discrimination against women based on their sex. Women are traditionally considered by the society as weaker sex. She has been accorded a subordinate position to men. She is exploited, degraded, violated and discriminated both in our homes and in outside world. This peculiar type of discrimination against women is prevalent everywhere in the world and more so in Indian society.

CAUSES OF GENDER INEQUALITY IN INDIA

- 1 patriarchy system. (men dominate, oppress and exploit women)
- 2 women too, through, continued socio-cultural conditioning (accepted their subordinate position to men)
- 3 Extreme poverty
- 4 lack of education
- 5 low quality of food and nutrition. (major health issue)
- 6 excessive workload

TYPES OF GENDER INEQUALITIES

There are many kinds of gender inequality or gender disparity which are as follows:

1. Natality inequality:
2. Professional or Employment inequality
3. Ownership inequality
4. Household inequality
5. Special opportunity inequality

LEGAL AND CONSTITUTIONAL SAFEGUARDS AGAINST GENDER INEQUALITY-

Indian Constitution provides for positive efforts to eliminate gender inequality; the PREAMBLE-Preamble to the Constitution talks about goals of achieving social, economic and political justice to everyone and to provide equality of status and of opportunity to all its citizens. Further, women have equal right to vote in our political system.

FR- Article 15 of the Constitution provides for prohibition of discrimination on grounds of sex also apart from other grounds such as religion, race, caste or place of birth. Article 15(3) authorizes the State to make any special provision for women and children.

DP-the Directive Principles of State Policy also provides various provisions which are for the benefit of women and provides safeguards against discrimination.

OTHER LAWS-protective Legislations have also been passed by the Parliament to eliminate exploitation of women and to give them equal status in society. For instance, the Sati (Prevention) Act, 1987 was enacted to abolish and make punishable the inhuman custom of Sati; the Dowry Prohibition Act, 1961 to eliminate the practice of dowry; the Special Marriage Act, 1954 to give rightful status to married couples who marry inter-caste or inter-religion; Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill (introduced in Parliament in 1991, passed in 1994 to stop female infanticide and many more such Acts. Furthermore, the Parliament time to time brings out amendments to existing laws in order to give protection to women according to the changing needs of the society, for instance, Section 304-B was added to the Indian Penal Code, 1860 to make dowry-death or bride-burning a specific offence punishable with maximum punishment of life imprisonment.

So there are varied legislative safeguards and protection mechanisms for women but the ground reality is very different. Despite all these provisions women are still being treated as second rate citizens in our country; men are treating them as an object to fulfill their carnal desires; crimes against women are at alarming stage; the practice of dowry is still widely prevalent; female infanticide is a norm in our homes.

MEASURES TO SOLVE GENDER INEQUALITY/REMOVAL OF GENDER INEQUALITY- (How we can Eliminate Gender Inequality)-

- 1 legislations
- 2 when the mentality will change
- 3 movement for Women's empowerment
- 4 economically independent and self-reliant (where they can fight their own fears and go out in the world fearless)
- 5 women have good education, good career,
- 6 ownership of property
- 7 freedom of choice and also the freedom to make their own decisions
- 8 Changes at District level mechanism (reporting of violence against women)
- 9 Changes at State level Mechanism (prompt action)
- 10 Law of Torts: An area of civil wrong
- 11 Sensitization of Criminal Justice system
- 12 Family Law- Domestic Violence Act, 2005 and Dowry Prohibition Act, 1987

CASE LAW-after the decision of the Supreme Court in **Gurupad Khandappa Magdum v Hirabai Khandappa Magdum** and that till such time, such ascertained share is handed over, the Hindu Undivided Family (HUF) would continue to be treated as the owner of such assets, notwithstanding the ascertained shares of such female heir as part of the corpus of the Hindu family, even as held in **State of Maharashtra v Narayan Rao Sham Rao Deshmukh**. And also after the amendment of Hindu Succession Act in September 2005 under Sec. 3(2), the right of a Hindu widow to get the full share of her late husband in coparcenary property (with limited interest — later enlarged to absolute right) continues or has been curtailed now. It means that From September 2005, daughters also have become coparceners. So, these are some landmarks where the legislature and judiciary had performed a well job i.e. by serving in favour of the deceased or victim in a way that the truth or right should not to fail.

“Fight for gender equality is not a fight against men. It is a fight against traditions that have chained them – a fight against attitudes that are ingrained in the society – it is a fight against system – a fight against proverbial laxshman Rekha which is different for men and different for women. The society must rise to the occasion. It must recognize & accept fact that men and women are equal partners in life. They are individual who have their own identity”.

• **2. Social reform movement in India**

The women's movement in India goes back to more than a hundred years but its composition, its agenda, its form and style, its outreach, its inclusiveness have been changing over the years. The social reform movement before independence first addressed the woman's condition within Hindu society but this was restricted to the women in the upper castes and exposed illiberal traditions such as that of treatment of widows and child marriage and was largely sponsored by men who saw threats to Hindu society by colonial powers' criticisms and hence wished to safeguard their cultural edifices by reforming what they thought were mere aberrations but left the patriarchal social structure untouched. Subsequent events were induction of women in the nationalist movement, the Constitution's promise of gender equality; 1974's Towards Equality Report prepared by the Committee on the Status of Women; international women's movements and The Convention on the Abolition of all Forms of Discrimination Against Women (CEDAW). Have these instruments been successful in liberating Indian women from patriarchy?

. Reforms regarding women in 19 century-

Reform regarding Women. The conditions of women at the beginning of 19th century was 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.

sati and it means: 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, 1978 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 Bethume school Calcutta by Bethume 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 •1911Transfer 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

- 1.
2. Jyotiba Phule • Was against upper class Brahminical domination • In 1873 founded Satya Shodhak samaj .

• 3. Gandhian movement.

- Gandhi invented a small, portable spinning wheel that could be folded into the size of a small typewriter. This was a strategy to inculcate discipline and dedication to weeding out the unwilling and ambitious and to include women in the movement at a time when many thought that such activities were not respectable activities for women.
- Gandhi strongly favored the emancipation of women, and he went so far as to say that "the women have come to look upon me as one of themselves." He opposed *purdah*, and the extreme oppression of Hindu widows, up to and including *sati*.
- He especially recruited women to participate in the salt tax campaigns and the boycott of foreign products.
- Gandhi's success in enlisting women in his campaigns, including the salt tax campaign, anti-untouchability campaign and the peasant movement, gave many women a new self-confidence and dignity in the mainstream of Indian public life
- According to Howard, Gandhi "developed his discourse as a religious renouncer within India's traditions to confront repressive social and religious customs regarding women and to bring them into the public sphere, during a time when the discourse on celibacy was typically imbued with masculine rhetoric and misogynist inferences.... his writings show a consistent evolution of his thought toward creating an equal playing field for members of both sexes and even elevating women to a higher plane—all through his discourse and unorthodox practice of *brahmacharya*."

• 4. Nehru's views – joint family etc.

- In India, the joint family system has continued down the ages for various reasons. As we all know, a particular social institution continues to exist so long as it has a purpose to serve. It always responds to the social requirements of the times. It stagnates and finally withers away only when there is no proper leadership to direct it.
- In the Indian context, the system continued due to a host of factors. First, our country was under foreign domination for several centuries. Secondly, the leadership, perhaps unimaginatively, believed in continuity for its own sake, rather than in change. Thirdly, there was a sort of indifferent passivity on the part of the leaders. It could, of course, be also due to the exhaustion of the will to act.
- Be it as it may, let us now discuss the merits and the demerits of the system.

Merits of the Joint Family:

- (1) Simple division of labour:
- (2) Avoids fragmentation of land:
- (3) Money saving device:
- (4) Insurance against odds:

- (5) Place of recreation:
- (6) Satisfaction of basic needs:
- (7) Provides leisure:
- (8) Social control:
- (9) Cradle of social virtues:(good qualities)
- (10) Provides psychological security:
- (11) Co-operation and economy:
- (12) Socialism in wealth:
- (13) Continuity of culture:

• **Demerits of the Joint Family:**

- 1. Hindrance in the development of personality:
- 2. 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.)
- 3. Source of litigation:
- 4. Loss of privacy:
- 5. The deplorable condition of women:
- 6. Lethargy and Indolence:
- 7. Uncontrolled procreation:
- 8. Child marriage:
- 9. Limits social mobility:
- 10. Miserable economic condition:
- 11. Hinders social change:

NEHRU'S VIEW- Nehru's primary purpose in instituting the Hindu code bills was to unify the Hindu community. Therefore, it made sense to define Hindu in the broadest possible sense. Through legal equity Nehru intended to "erase distinctions within the Hindu community and create Hindu social unity." "The integration of Hindus into a homogeneous society could best be done by enacting an all-embracing code which encompasses within its fold every sect, caste, and religious denomination." The debates over Article 44 in the Constitution revealed that many believed varied laws and legal divisions helped create, or at least were reflective of, social divisions. Nehru and his supporters insisted that the Hindu community, which comprised 80% of the Indian population, first needed to be united before any actions were taken to unify the rest of India. Therefore, the codification of Hindu personal law became a symbolic beginning on the road to establishing the Indian national identity. Nehru also felt that because he was Hindu, it was his prerogative to codify specifically Hindu law, as opposed to Muslim or Jewish law.

Those in Parliament who supported the bills also saw them as a vital move towards the modernization of Hindu society, as they would clearly delineate secular laws from religious law. Many also heralded the bills' opportunity to implement greater rights for women, which were established to be necessary for India's development.

Support and opposition

During the debates over the Hindu code bills in the General Assembly, large segments of the Hindu population protested and held rallies against the bills. Numerous organizations were formed to lobby for the defeat of the bills and massive amounts of literature were distributed throughout the Hindu population. In the face of such vocal opposition, Nehru had to justify the passage of the Hindu code bills. Before, he had stated that, in accordance with the policy of noninterference, he was undertaking codification in compliance with a demand from the Hindu community. When it became clear that the vast majority of Hindus did not support the Bills, he insisted that though a minority, those who supported the Hindu Code Bills were modern and progressive and subsequently held vital weight in the Hindu

community in importance if not in numbers. He also argued that because the bill's supporters were progressive, those who dissented would eventually change their position when confronted with the realities of modernity.

The Hindu Code Bill's proponents included both men and women within and outside of Parliament belonging to various political parties. Significant support for the bills came from Congress' women's wing (All-India Women's Conference), and several other women's organizations. Advocates largely sought to convince the public that the bills did not stray far from classical Hindu personal law. Essentially, those in Parliament who opposed the bills were men, and largely came from Nehru's own Congress party. They believed that the code bills would institute reform that strayed too far from the classical Hindu social order, and were too radical. They argued that practices such as divorce were absolutely not condoned by Hinduism. "To a Hindu the marriage is sacramental and as such indissoluble." They also felt that should equal property rights be given to women, the Mitākṣarā concept of a joint family would crumble, as would the foundation of Hindu society. They also insisted that were daughters and wives given inheritance more conflicts would arise within families. Their main argument, however, was that the bills lacked public support. Therefore, they were a direct contradiction to the policy of noninterference and would mean the government was meddling in personal law. They implied that these were bills propagated by a small minority of Hindus onto the majority who did not want them.

Today

The application of the Hindu Code Bills have been controversial in determining who is to be called a Hindu and who is entitled to be exempted from certain rules of Hindu law.

They are also still contentious among many communities, including women's, nationalist, and religious groups. At the time of their creation, many portrayed them as a serious deviation from Hindu legal precedent. Feminists such as Nivedita Menon argue that since these personal laws cover matters of marriage, inheritance and guardianship of children, and since all personal laws discriminate against women, the tension within these laws is a contradiction between the rights of women as individual citizens and those of religious communities as collective units of the democracy. In her 1998 article "State, Gender, Community: Citizenship in Contemporary India", she calls for more support and initiation for reform within all personal laws, more legislation in areas that are not covered by secular or personal laws—such as domestic violence. She also argues for the setting-up of a gender-equal framework of rights that covers the "public" domain of work (maternity benefits, equal wages) and is available to all Indian citizens (thus avoiding a direct confrontation with communities and communal politics)

- **5. Karachi congress – Fundamental Rights Resolution.**

The Gandhi Irwin Pact was endorsed by the Congress in the Karachi Session of 1931, that was held from March 26-31. Gandhi was nominated to represent Congress in the Second Round Table Conference. Just a week back, Bhagat Singh, Sukhdev and Rajguru had been executed. So, there was anger in the public whose point was that why Gandhi did accept to sign the pact. So, when Gandhi was on the way to attend the Karachi session, all over the route, he was greeted with the Black flags. In the Karachi session, congress passed a resolution to dissociate itself from and disapprove the political violence in any shape. The resolution which was drafted by Gandhi, admired the bravery and sacrifice of the three martyrs. In the same line, the Congress endorsed the Gandhi-Irwin Pact and reiterated the goal of "Poorna Swaraj". Resolution on Fundamental Rights and Economic Policy The Karachi session was presided by Sardar Patel. The congress adopted a resolution on Fundamental Rights and Economic Policy which represented the Party's Social, Economic and Political programme. It was later known as Karachi Resolution. Nehru had originally drafted it, but some Congress leaders thought it was too radical and it was redrafted. We have been told that MN Roy also played a role in drafting this resolution, but Nehru himself later said that MN Roy had nothing to do with it. In any case, the redrafted resolution made the Karachi Session memorable, because for the first time, the resolution tried to define what would be the meaning of Swaraj for common

people. Some important aspects of these resolutions were: Basic civil rights of freedom of speech, Freedom of Press, Freedom of assembly, Freedom of association, Equality before law Elections on the basis of Universal Adult Franchise Free and compulsory primary education. Substantial reduction in rent and taxes Better conditions for workers including a living wage, limited hours of work. Protection of women and peasants Government ownership or control of key industries, mines, and transport. Protection of Minorities. Thus, the Congress which was agenda less a few years back had the most impressive agenda in hand now and made this agenda- the basis of its political programme for the next many years to come.

- **6. Equality of sexes.**

Gender equality, also known as **sex equality**, **gender egalitarianism**, **sexual equality** or **equality of the genders**, is the view that men and women should receive equal treatment, and should not be discriminated against based on gender

POST WAR ERA- After World War II, a more general movement for gender equality developed based on women's liberation and feminism. The central issue was that the rights of women should be the same as of men.

The United Nations and other international agencies have adopted several conventions, toward the promotion of gender equality. Prominent international instruments include:

- In 1960 the Convention against Discrimination in Education was adopted, coming into force in 1962 and 1968.
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it came into force on 3 September 1981.
- The Vienna Declaration and Programme of Action, a human rights declaration adopted by consensus at the World Conference on Human Rights on 25 June 1993 in Vienna, Austria. Women's rights are addressed at para 18.
- The Declaration on the Elimination of Violence Against Women was adopted by the United Nations General Assembly in 1993.
- In 1994, the twenty-year *Cairo Programme of Action* was adopted at the International Conference on Population and Development (ICPD) in Cairo. This non binding programme-of-action asserted that governments have a responsibility to meet individuals' reproductive needs, rather than demographic targets. As such, it called for family planning, reproductive rights services, and strategies to promote gender equality and stop violence against women.
- Also in 1994, in the Americas, The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the *Convention of Belém do Pará*, called for the end of violence and discrimination against women.
- At the end of the Fourth World Conference on Women, the UN adopted the Beijing Declaration on 15 September 1995 - a resolution adopted to promulgate a set of principles concerning gender equality.
- The United Nations Security Council Resolution 1325 (UNSCR 1325), which was adopted on 31 October 2000, deals with the rights and protection of women and girls during and after armed conflicts.
- The Maputo Protocol guarantees comprehensive rights to women, including the right to take part in the political process, to social and political equality with men, to control of their reproductive health,

and an end to female genital mutilation. It was adopted by the African Union in the form of a protocol to the African Charter on Human and Peoples' Rights, and came into force in 2005.

- The EU directive *Directive 2002/73/EC - equal treatment of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions* states that: "Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited."
- The Council of Europe's Convention on preventing and combating violence against women and domestic violence, the first legally binding instrument in Europe in the field of violence against women, came into force in 2014.
- The Council of Europe's *Gender Equality Strategy 2014-2017*, which has five strategic objectives:
 - Combating gender stereotypes and sexism
 - Preventing and combating violence against women
 - Guaranteeing Equal Access of Women to Justice
 - Achieving balanced participation of women and men in political and public decision-making
 - Achieving Gender Mainstreaming in all policies and measures

Such legislation and affirmative action policies have been critical to bringing about changes in societal attitudes. Most occupations are now equally available to men and women, in many countries. For example, many countries now permit women to serve in the armed forces, the police forces and to be fire fighters – occupations traditionally reserved for men. Although these continue to be male dominated occupations an increasing number of women are now active, especially in directive fields such as politics, and occupy high positions in business.

Similarly, men are increasingly working in occupations which in previous generations had been considered women's work, such as nursing, cleaning and child care. In domestic situations, the role of Parenting or child rearing is more commonly shared or not as widely considered to be an exclusively female role, so that women may be free to pursue a career after childbirth.

Another manifestation of the change in social attitudes is the non-automatic taking by a woman of her husband's surname on marriage.

A highly contentious issue relating to gender equality is the role of women in religiously orientated societies. For example, the Cairo Declaration on Human Rights in Islam declared that women have equal dignity, but not equal rights, and this was accepted by many predominantly Muslim countries. In some Christian churches, the practice of churching of women may still have elements of ritual purification and the Ordination of women to the priesthood may be restricted or forbidden. Some Christians or Muslims believe in Complementarianism, a view that holds that men and women have different, but complementing roles. This view may be in opposition to the views and goals of gender equality.

In addition, there are also non-Western countries of low religiosity where the contention surrounding gender equality remains. In China, cultural preference for a male child has resulted in a shortfall of women in the population. The feminist movement in Japan has made many strides and has resulted in the Gender Equality Bureau, but Japan still remains low in gender equality compared to other industrialized nations.

The notion of gender equality, and of its degree of achievement in a certain country, is very complex, because there are countries that have a history of a high level of gender equality in *certain* areas of life, but not in other areas. An example is Finland, which has offered very high opportunities to women in public/professional life, but has had a weak legal approach to the issue of violence against women, with the situation in this country having been called a paradox. Denmark has also received harsh criticism for inadequate laws in regard to sexual violence in a 2008 report produced by Amnesty International, which has described Danish laws as "inconsistent with international human rights standards", which has led to Denmark eventually reforming its sexual offenses legislation in

2013. Indeed, there is a need of caution when categorizing countries by the level of gender equality that they have achieved. According to Mala Htun and Laurel Weldon "gender policy is not one issue but many" and:

"When Costa Rica has a better maternity leave than the United States, and Latin American countries are quicker to adopt policies addressing violence against women than the Nordic countries, one at least ought to consider the possibility that fresh ways of grouping states would further the study of gender politics."

Not all ideas for gender equality have been popularly adopted.

Efforts to fight inequality

World bodies have defined gender equality in terms of human rights, especially women's rights, and economic development. UNICEF describes that gender equality "means that women and men, and girls and boys, enjoy the same rights, resources, opportunities and protections. It does not require that girls and boys, or women and men, be the same, or that they be treated exactly alike."^[36]

UNFPA stated that, "despite many international agreements affirming their human rights, women are still much more likely than men to be poor and illiterate. They have less access to property ownership, credit, training and employment. They are far less likely than men to be politically active and far more likely to be victims of domestic violence."

Thus, promoting gender equality is seen as an encouragement to greater economic prosperity. For example, nations of the Arab world that deny equality of opportunity to women were warned in a 2008 United Nations-sponsored report that this disempowerment is a critical factor crippling these nations' return to the first rank of global leaders in commerce, learning and culture. That is, Western bodies are less likely to conduct commerce with nations in the Middle East that retain culturally accepted attitudes towards the status and function of women in their society in an effort to force them to change their beliefs in the face of relatively underdeveloped economies.

In 2010, the European Union opened the European Institute for Gender Equality (EIGE) in Vilnius, Lithuania to promote gender equality and to fight sex discrimination.

Gender equality is part of the national curriculum in Great Britain and many other European countries. Personal, Social and Health Education, religious studies and Language acquisition curricula tend to address gender equality issues as a very serious topic for discussion and analysis of its effect in society.

A large and growing body of research has shown how gender inequality undermines health and development. To overcome gender inequality the United Nations Population Fund states that, "Women's empowerment and gender equality requires strategic interventions at all levels of programming and policy-making. These levels include reproductive health, economic empowerment, educational empowerment and political empowerment."

UNFPA says that "research has also demonstrated how working with men and boys as well as women and girls to promote gender equality contributes to achieving health and development outcomes."

Violence against women

Violence against women (in short VAW) is a technical term used to collectively refer to violent acts that are primarily or exclusively committed against women. This type of violence is gender-based, meaning that the acts of violence are committed against women expressly *because* they are women, or as a result of patriarchal gender constructs. The UN Declaration on the Elimination of Violence Against Women defines VAW as "*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*" and states that:

"violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the

prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men"

Forms of VAW include sexual violence (including war rape, marital rape and child sexual abuse, the latter often in the context of child marriage), domestic violence, forced marriage, female genital mutilation, forced prostitution, sex trafficking, honor killings, dowry killings, acid attacks, stoning, flogging, forced sterilization, forced abortion, violence related to accusations of witchcraft, mistreatment of widows (e.g. widow inheritance). Fighting against VAW is considered a key issues for achieving gender equality. The Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

In Western countries which are overall safe (i.e. where gang murders, armed kidnappings, civil unrest, and other similar acts are rare) the vast majority of murdered women are killed by partners/ex-partners: as of 2004-2009, former and current partners were responsible for more than 80% of all cases of murders of women in Cyprus, France, and Portugal. By contrast, in countries with a high level of organized criminal activity and gang violence murders of women are more likely to occur in a public sphere, often in a general climate of indifference and impunity. In addition, many countries do not have adequate comprehensive data collection on such murders, aggravating the problem.

In some parts of the world, various forms of VAW are tolerated and accepted as parts of everyday life; according to UNFPA:

"In some developing countries, practices that subjugate and harm women - such as wife-beating, killings in the name of honour, female genital mutilation/cutting and dowry deaths - are condoned as being part of the natural order of things."

In most countries, it is only in recent decades that VAW (in particular when committed in the family) has received significant legal attention. The Istanbul Convention acknowledges the long tradition of European countries of ignoring, *de jure* or *de facto*, this form of violence. In its explanatory report at para 219, it states:

"There are many examples from past practice in Council of Europe member states that show that exceptions to the prosecution of such cases were made, either in law or in practice, if victim and perpetrator were, for example, married to each other or had been in a relationship. The most prominent example is rape within marriage, which for a long time had not been recognised as rape because of the relationship between victim and perpetrator."

In *Opuz v Turkey*, the European Court of Human Rights recognized violence against women as a form discrimination against women, para 200: "[T]he Court considers that the violence suffered by the applicant and her mother may be regarded as *gender-based violence which is a form of discrimination against women*." This is also the position of the Istanbul Convention which reads:

"Article 3 - Definitions, For the purpose of this Convention: a "violence against women" is understood as a violation of human rights and a *form of discrimination against women* [...]"

Reproductive and sexual health and rights

Global maternal mortality rate per 100 000 live births, (2010)

In 2010, Sierra Leone launched free healthcare for pregnant and breastfeeding women

The importance of women having the right and possibility to have control over their body, reproduction decisions and sexuality, and the need for gender equality in order to achieve these goals are recognized as crucial by the Fourth World Conference on Women in Beijing and the UN International Conference on Population and Development Program of Action. The World Health Organization (WHO) has stated that promotion of gender equality is crucial in the fight against HIV/AIDS.

Maternal mortality is a major problem in many parts of the world. UNFPA states that countries have an obligation to protect women's right to health, but many countries do not do that. Maternal mortality is considered today not just an issue of development, but also an issue of human rights. UNFPA says that,

"since 1990, the world has seen a 45 per cent decline in maternal mortality – an enormous achievement. But in spite of these gains, almost 800 women still die every day from causes related to pregnancy or childbirth. This is about one woman every two minutes." According to UNFPA:

"Preventable maternal mortality occurs where there is a failure to give effect to the rights of women to health, equality and non-discrimination. Preventable maternal mortality also often represents a violation of a woman's right to life."

The right to reproductive and sexual autonomy is denied to women in many parts of the world, through practices such as forced sterilization, forced/coerced sexual partnering (e.g. forced marriage, child marriage), criminalization of consensual sexual acts (such as sex outside marriage), lack of criminalization of marital rape, violence in regard to the choice of partner (honor killings as punishment for 'inappropriate' relations). Amnesty International's Secretary General has stated that: "It is unbelievable that in the twenty-first century some countries are condoning child marriage and marital rape while others are outlawing abortion, sex outside marriage and same-sex sexual activity – even punishable by death." All these practices infringe on the right of achieving reproductive and sexual health. High Commissioner for Human Rights Navi Pillay has called for full respect and recognition of women's autonomy and sexual and reproductive health rights, stating.

"Violations of women's human rights are often linked to their sexuality and reproductive role. Women are frequently treated as property, they are sold into marriage, into trafficking, into sexual slavery. Violence against women frequently takes the form of sexual violence. Victims of such violence are often accused of promiscuity and held responsible for their fate, while infertile women are rejected by husbands, families and communities. In many countries, married women may not refuse to have sexual relations with their husbands, and often have no say in whether they use contraception."

Adolescent girls are at the highest risk of sexual coercion, sexual ill health, and negative reproductive outcomes. The risks they face are higher than those of boys and men; this increased risk is partly due to gender inequity (different socialization of boys and girls, gender based violence, child marriage) and partly due to biological factors (females' risk of acquiring sexually transmitted infections during unprotected sexual relations is two to four times that of males').

Socialization within rigid gender constructs often creates an environment where sexual violence is common; according to the WHO: "Sexual violence is also more likely to occur where beliefs in male sexual entitlement are strong, where gender roles are more rigid, and in countries experiencing high rates of other types of violence." The sexual health of women is often poor in societies where a woman's right to control her sexuality is not recognized. Richard A. Posner writes that "Traditionally, rape was the offense of depriving a father or husband of a valuable asset — his wife's chastity or his daughter's virginity". Historically, rape was seen in many cultures (and is still seen today in some societies) as a crime against the honor of the family, rather than against the self-determination of the woman. As a result, victims of rape may face violence, in extreme cases even honor killings, at the hands of their family members. Catharine MacKinnon argues that in male dominated societies, sexual intercourse is imposed on women in a coercive and unequal way, creating a continuum of victimization, where women have few positive sexual experiences; she writes "To know what is wrong with rape, know what is right about sex. If this, in turn, is difficult, the difficulty is as instructive as the difficulty men have in telling the difference when women see one. Perhaps the wrong of rape has proved so difficult to define because the unquestionable starting point has been that rape is defined as distinct from intercourse, while for women it is difficult to distinguish the two under conditions of male dominance."

One of the challenges of dealing with sexual violence is that in many societies women are perceived as being readily available for sex, and men are seen as entitled to their bodies, until and unless women object. Rebecca Cook wrote in *Submission of Interights to the European Court of Human Rights in the case of M.C. v. Bulgaria, 12 April 2003*.

"The equality approach starts by examining not whether the woman said 'no', but whether she said 'yes'. Women do not walk around in a state of constant consent to sexual activity unless and until they say 'no', or offer resistance to anyone who targets them for sexual activity. The right to physical and sexual autonomy means that they have to affirmatively consent to sexual activity."

Freedom of movement

Women's freedom of movement continues to be legally restricted in some parts of the world. This restriction is often due to marriage laws. For instance, in Yemen, marriage regulations stipulate that a wife must obey her husband and must not leave home without his permission. In some countries, women must legally be accompanied by their male guardians (such as the husband or male relative) when they leave home.

The CEDAW states at Article 15 (4) that:

Article 15

"4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile."

Gendered arrangements of work and care

Since the 1950s, social scientists as well as feminists have increasingly criticized gendered arrangements of work and care and the male breadwinner role. Policies are increasingly targeting men as fathers as a tool of changing gender relations, Shared earning/shared parenting marriage, that is, a relationship where the partners collaborate at sharing their responsibilities inside and outside of the home, is often encouraged in Western countries.

Girls' access to education

In many parts of the world, girls' access to education is very restricted. Girls face many obstacles which prevent them to take part in education, including: early and forced marriages; early pregnancy; prejudice based on gender stereotypes at home, at school and in the community; violence on the way to school, or in and around schools; long distances to schools; vulnerability to the HIV epidemic; school fees, which often lead to parents sending only their sons to school; lack of gender sensitive approaches and materials in classrooms. According to OHCHR, there have been multiple attacks on schools worldwide during the period 2009-2014 with "a number of these attacks being specifically directed at girls, parents and teachers advocating for gender equality in education". The United Nations Population Fund says:

"About two thirds of the world's illiterate adults are women. Lack of an education severely restricts a woman's access to information and opportunities. Conversely, increasing women's and girls' educational attainment benefits both individuals and future generations. Higher levels of women's education are strongly associated with lower infant mortality and lower fertility, as well as better outcomes for their children."

Political participation of women

Women in government



A world map showing countries governmental participation by women, 2010.

Women are underrepresented in most countries' National Parliaments. The 2011 UN General Assembly resolution on women's political participation called for female participation in politics, and expressed concern about the fact that "women in every part of the world continue to be largely marginalized from the political sphere". The Council of Europe states that:

"Pluralist democracy requires balanced participation of women and men in political and public decision-making. Council of Europe standards provide clear guidance on how to achieve this."

Institutions also play an essential role in achieving and enforcing gender equality. However, basic legal and human rights, access to and the control of resources, employment and earnings and social and political participation are still not guaranteed in many social and legal institutions. For example, only 22 per cent of parliamentarians globally are women and therefore, men continue to occupy most positions of political and legal authority.

Economic empowerment of women

Female economic activity is a common measure of gender equality in an economy. UN Women states that: "Investing in women's economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth."

Gender discrimination often results in women ending in insecure, low-wage jobs, and being disproportionately affected by poverty, discrimination and exploitation.

The UN Population Fund says that, "Six out of 10 of the world's poorest people are women. Economic disparities persist partly because much of the unpaid work within families and communities falls on the shoulders of women, and because women continue to face discrimination in the economic sphere."

Marriage, divorce and property laws and regulations

Equal rights for women in marriage, divorce, and property/land ownership and inheritance are essential for gender equality. CEDAW has called for the end of discriminatory family laws. In 2013, UN Women stated that "While at least 115 countries recognize equal land rights for women and men, effective implementation remains a major challenge".

The legal and social treatment of married women has been often discussed as a political issue from the 19th century onwards. John Stuart Mill, in *The Subjection of Women* (1869) compared marriage to slavery and wrote that: "The law of servitude in marriage is a monstrous contradiction to all the principles of the modern world, and to all the experience through which those principles have been slowly and painfully worked out." In 1957, James Everett, then Minister for Justice in Ireland, stated: "The progress of organised society is judged by the status occupied by married women". Until the 1970s, legal subordination of married women was common across European countries, through marriage laws giving legal authority to the husband, as well as through marriage bars. In France, married women obtained the right to work without their husband's consent in 1965; while the paternal authority of a man over his family was ended in 1970 (before that parental responsibilities belonged solely to the father who made all

legal decisions concerning the children); and a new reform in 1985 abolished the stipulation that the father had the sole power to administer the children's property. In Austria, the marriage law was overhauled between 1975 and 1983, abolishing the restrictions on married women's right to work outside the home, providing for equality between spouses, and for joint ownership of property and assets. In Europe, Switzerland was one of the last countries to establish gender equality in marriage: married women's rights were severely restricted until 1988, when legal reforms providing gender equality in marriage, abolishing the legal authority of the husband, came into force (these reforms had been approved in 1985 by voters in a referendum, who narrowly voted in favor with 54.7% of voters approving).

Although dowry is today associated with South Asia, the practice has been common until the mid-20th century in parts of Southeast Europe. For example, in Greece it was only in 1983 that dowry was removed from family law through legal changes which reformed the marriage law and provided gender equality in marriage.^{[87][88]} These new changes also dealt with the practice of women changing their surnames to that of the husbands upon getting married, a practice which has been outlawed or restricted in some jurisdictions, because it is seen as contrary to women's rights. As such, women in Greece are required to *keep* their birth names for their whole life.

Laws regulating marriage and divorce continue to discriminate against women in many countries. For example, in Yemen, marriage regulations state that a wife must obey her husband and must not leave home without his permission. In Iraq husbands have a legal right to "punish" their wives.

Violence and mistreatment of women in relation to marriage has come to international attention during the past decades. This includes both violence committed inside marriage (domestic violence) as well as violence related to marriage customs and traditions (such as dowry, bride price, forced marriage and child marriage). Violence against a wife continues to be seen as legally acceptable in some countries; for instance in 2010, the United Arab Emirates's Supreme Court ruled that a man has the right to physically discipline his wife and children as long as he does not leave physical marks. The criminalization of adultery has been criticized as being a prohibition, which, in law or in practice, is used primarily against women; and incites violence against women (crimes of passion, honor killings). A Joint Statement by the United Nations Working Group on discrimination against women in law and in practice in 2012 stated: "the United Nations Working Group on discrimination against women in law and in practice is deeply concerned at the criminalization and penalization of adultery whose enforcement leads to discrimination and violence against women." UN Women also stated that "Drafters should repeal any criminal offenses related to adultery or extramarital sex between consenting adults".

Investigation and prosecution of crimes against women and girls

Human rights organizations have expressed concern about the legal impunity of perpetrators of crimes against women, with such crimes being often ignored by authorities. This is especially the case with murders of women in Latin America. In particular, there is impunity in regard to domestic violence. High Commissioner for Human Rights, Navi Pillay, has stated on domestic violence against women:

"The reality for most victims, including victims of honor killings, is that state institutions fail them and that most perpetrators of domestic violence can rely on a culture of impunity for the acts they commit – acts which would often be considered as crimes, and be punished as such, if they were committed against strangers."

Women are often, in law or in practice, unable to access legal institutions. UN Women has said that, "Too often, justice institutions, including the police and the courts, deny women justice".

Abuses regarding nutrition are taboos in regard to certain foods, which result in poor nutrition of women, and may endanger their health, especially if pregnant.

Women's ability to control their fertility is often reduced. For instance, in northern Ghana, the payment of bride price signifies a woman's requirement to bear children, and women using birth control face threats, violence and reprisals. Births in parts of Africa are often attended by traditional birth attendants (TBAs), who sometimes perform rituals that are dangerous to the health of the mother. In many societies, a difficult labour is believed to be a divine punishment for marital infidelity, and such women face abuse and are pressured to "confess" to the infidelity. The custom of bride price has been criticized as contributing to the mistreatment of women in marriage, and preventing them from leaving abusive marriages. UN Women recommended its abolition, and stated that: "Legislation should ...State that divorce shall not be contingent upon the return of bride price but such provisions shall not be interpreted to limit women's right to divorce; State that a perpetrator of domestic violence, including marital rape, cannot use the fact that he paid bride price as a defence to a domestic violence charge."

The caste system in India which leads to untouchability (the practice of ostracizing a group by segregating them from the mainstream society) often interacts with gender discrimination, leading to a double discrimination faced by Dalit women. In a 2014 survey, 27% of Indians admitted to practicing untouchability.

Tribal traditions can be harmful to males; for instance, the Satere-Mawe tribe use bullet ants as an initiation rite. Men must wear gloves with hundreds of bullet ants woven in for ten minutes: the ants' stings cause severe pain and paralysis. This experience must be completed twenty times for boys to be considered "warriors".

Other harmful traditional practices include marriage by abduction, ritualized sexual slavery (Devadasi, Trokosi), breast ironing and widow inheritance.

Portrayal of women in the media

The way women are represented in the media has been criticized as interfering with the aim of achieving gender equality by perpetuating negative gender stereotypes. The exploitation of women in mass media refers to the criticisms that are levied against the use or portrayal of women in the mass media, when such use or portrayal aims at increasing the appeal of media or a product, to the detriment of, or without regard to, the interests of the women portrayed, or women in general. Concerns include the fact that the media has the power to shape the population's perceptions and to influence ideas, and therefore the sexist portrayals of women in the media may impact on how society sees and treats women in real life. One common criticism of the way women are represented in the media is that the media reinforces stereotypical societal views of "what women are for", by portraying women either as submissive housewives or as sex objects.

Health

Social constructs of gender (that is, cultural ideals of socially acceptable masculinity and femininity) often have a negative effect on health. The WHO cites the example of women not being allowed to travel alone outside the home (to go to the hospital), and women being prevented by cultural norms to ask their husbands to use a condom, in cultures which simultaneously encourage male promiscuity, as social norms that harm women's health. Teenage boys suffering accidents due to social expectations of impressing their peers through risk taking, and men dying at much higher rate from lung cancer due to smoking, in cultures which link smoking to masculinity, are cited by the WHO as examples of gender norms negatively affecting men's health. The WHO has also stated that there is a strong connection between gender socialization and transmission and lack of adequate management of HIV/AIDS.

Gender mainstreaming

Gender mainstreaming is the public policy of assessing the different implications for women and men of any planned policy action, including legislation and programmes, in all areas and levels, with the aim of achieving gender equality. The concept of gender mainstreaming was first proposed at the 1985 Third World Conference on Women in Nairobi, Kenya. The idea has been developed in the United Nations development community. Gender mainstreaming "involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities".

Renaissance
Law College

UNIT-II

UNIT-II Women in Post-Independence India

The Gandhian era and the decades after independence have witnessed tremendous changes in the status of women in Indian society. The constitution has laid down as a fundamental right the equality of sexes. But the change from a position of utter degradation and subjugation of women in the nineteenth century to a position of equality in the middle of the twentieth century is not a simple case of progress of women in modern era.

Women in Post Independent India faced a major upheaval as regards their position, perception and role in society. In the period immediately following Independence, a number of constitutional provisions were made for women's social, economic and political benefits. However, the most revolutionary change in the position and role of women in the post Independent period was brought about by the Towards Equality Report.

Women in post-independent India were part of a new state that developed a bureaucratic structure designed to meet the specific needs of women. This included creating the National Social Welfare Board, assigning special duties to block development officers, and asking the Department of Health and Welfare to prepare a specific plan with women in mind. In the documents of the new Indian state the past had been undone, modernity was triumphant, and women were no longer subordinate to men.

Women in the immediate post-Independent period

However, in the post-independent period, the immediate concerns of women were not constitutional rights but political reality. The partition of British India into India and Pakistan affected millions of women and men as populations fled both countries. When the migrations were over more than eight million people had moved from Pakistan to India or from India to Pakistan. Many women, estimates range from 80,000 to 150,000, were abducted during this time. As a result India and Pakistan agreed on procedures for recovery and restoration.

Constitutional Provisions for Women in the post-Independent period

The Constitution of India declared equality as one of the Fundamental Rights. It also guaranteed equal protection of the law, equal opportunities in public employment, and prohibited discrimination in public places. The Hindu Code, passed as separate Acts between 1955 and 1956, rewrote the Hindu laws of marriage and divorce, adoption, and inheritance. Adult suffrage added women to the electoral roles and political parties pledged their commitment to women's issues. Many of the women who participated in the social reform and political activities of the 1920s, 1930s, and 1940s were pleased with the constitutional provisions and legal reform. Most of them belonged to the upper and middle classes of society, and they were ready to become the beneficiaries of new opportunities.

Women's Organisations in the post-Independent period

The government asked prominent women's organizations to assist them in developing five-year plans. These women agreed with government that economic growth was the most important issue. The best known of the women's organizations became institutionalized as they secured permanent buildings, well-staffed offices, libraries, and bureaucracies of their own. They set up and continue to administer programs designed to serve women, especially day-care centres, hostels for working women, educational centres and medical dispensaries. Their approach, like that of the Government, has been Welfarism. A number of women's organisations have been criticised for this approach and blamed for not helping to prepare

women for new responsibilities. It was felt that women themselves were hindering change and bringing about the traditional role of women as dependants.

The Communist women were the most vocal in expressing their dissatisfaction with constitutional provisions, five-year plans, and government and party promises. In 1954 Vibhla Farooqui and her female colleagues in the Communist Party of India organized a national conference to address women's issues. At this conference they founded the National Federation of Indian Women (NFIW) to focus attention on women's struggle for equal rights and responsibilities in all spheres of life and for improvement in their living conditions. They felt that the existing political forces were trying to reduce the role of women's organisations to charitable work combined with the passing of resolutions. They therefore pleaded for a new orientation and a change in the status of these women's organisations.

There were other women, close followers of Mahatma Gandhi, who saw economic and social change as more important than legal and constitutional rights. They too were dissatisfied. But many of these individuals also believed in voluntarism and focused their attention on grass-roots projects.

Toward Equality Report and its impact

Despite the criticism, the Indian government's commitment to equality was not seriously challenged until 1974 when *Toward Equality*, a report on the status of women, was published. In 1971 the Ministry of Education and Social Welfare appointed a committee to examine the constitutional, legal and administrative provisions that have a bearing on the social status of women, their education and employment and to assess the impact of these provisions. There had been an internal demand for such a document but the actual timing was in response to a United Nations request to all countries to prepare reports on the status of women for International Women's Year scheduled for 1975.

Dr. Phulrenu Guha, Union Minister for Social Welfare, chaired this committee with Dr. Vina Mazumdar, appointed in 1972, as member-secretary. The remaining nine members of the committee represented a wide range of interests and experience. The committee was asked to suggest ways to make women full members of the Indian state. In order to write this report, the committee commissioned a number of studies and interviewed about 500 women from each state. By 1973 they had concluded their proceedings. These studies and the report issued in 1974 were the first major effort to understand the extent to which constitutional guarantees of equality and justice had not been met for women.

Authors of this report asserted that women's status had not improved but had, in fact, declined since Independence. The declaration that social change and development in India had adversely affected women shocked many Indians. This was a time when Mrs. Indira Gandhi was the Prime Minister and India was one of the few countries in the world that regularly sent women abroad as ambassadors, representatives to the United Nations, and delegates to international conferences. To celebrate International Women's Year, organizations all over the country were programming special sessions to publicize women's achievements.

The impact of the *Toward Equality* on the programs and policies for women has been very crucial. Following publication of the report the Indian Council of Social Science Research (ICSSR) established an advisory committee on women's studies headed by Dr. Vina Mazumdar. This supported further research into questions raised in the report. Almost all of the research carried out under the direction of this advisory committee attempted to discover the conditions under which women lived and worked in contemporary India. In 1980 the Centre for Women's Development Studies, an autonomous research institute, was founded, with Vina Mazumdar as director. This centre has carried forward the work of studying the status of women and making recommendations to the government regarding policies. The

Research Centre for Women's Studies at SNDT Women's University began its work in 1974 as a research unit. Under the able directorship of Neera Desai, it was accorded the status of Centre for Advanced Studies. Thus the Towards Equality report made some very significant changes in the position and perception of women in the post Independent period. Further, the Institutional changes too brought about a marked change in women's roles as is seen by the leading roles that Indian women continue to play in India and the world stage.

Revolutionary changes have taken place in the position of women in India after independence. The Constitution of India provided for special steps to be taken by the government to improve the condition of women by separate institutions.

A quick and effective change in the status of women was contemplated through social legislations. The Constitution of India guarantees certain fundamental rights and freedom such as protection of life and personal liberty. Indian women are the beneficiaries of these rights in the same manner as the Indian men. Article 14 ensures equality before law and Article 15 prohibits any discrimination. Article 16(a) forbids discrimination in any respect of employment of office under the state on the grounds only of religion caste, sex, descent, and place of birth, residence or any of them.

In the post-independent India we had series of laws passed for the upliftment of women. These legislations have been brought in order to give equal rights and privileges with men, to eliminate discriminations against women, remove inequality between sexes, and remove external barriers coming in the way of their self-realisation and development. The important Acts passed for the upliftment of women are:

1. The Hindu Marriage Act of 1955:

This Act provided equal rights to women to obtain divorce and also maintenance in certain cases.

2. The Hindu Adoption and Maintenance Act of 1956:

By virtue of this Act a woman can adopt a boy or a girl as her son or daughter.

3. The Hindu Minority and Guardianship Act of 1956:

This Act provides that a woman is entitled to act as the natural guardian of her minor children.

4. The Hindu Succession Act of 1956:

As a result of this Act, woman has got equal rights in the inheritance of family property. This Act is a landmark in the history of Hindu law.

5. The Hindu Women Right to Property Act of 1973:

This Act has given more facilities to women. According to this Act, the daughter, the widow, and the mother can inherit property of the deceased simultaneously. Now women will hold her property absolutely with full right to sell, mortgage, and dispose of as she desires. But according to the Hindu Succession Act, 1956, woman has only to enjoy her husband's share in coparcenaries property for her life time without any right to alienate property.

6. The Dowry Prohibition Act of 1961:

According to this Act, taking or demanding dowry is an offence punishable by imprisonment and or fines.

7. The Equal Remuneration Act of 1976:

This Act does not permit wage discrimination between male and female workers.

Besides legislations, education was also regarded as an important factor in raising the status of women in society. Therefore, active steps were taken to promote women's education. Immediately after independence it was realised that unless half of our population are exposed to educational process, modernisation of our society would be a distant dream. Various Committees and Commissions emphasised the need for equalisation of educational opportunities.

This led to opening of different schools and colleges, especially for women.

However, the absence of any economic compulsion was in fact one of the main reasons for the slow progress of women education till seventies. There is a gradual change among the women that in order to make a decent living and to assert their rights and privileges and to become economically independent,

they must acquire proper skill through education. Hence, there has been a constant rise of women ratio in the field of higher education.

There has been a remarkable increase in the number of women getting out of the four walls of the household and becoming workers in both cities and villages, according to the 1991 census report. Job opportunities outside the family, economic hardship and social situation have encouraged women to take up employment outside the family. The attitudes of women's relatives towards women's employment, women's own preference for employment are now quite different from earlier beliefs. People are now in favour of women employment.

Today, the centre of production is located outside the family, economic conditions demand participation of women with men in the production process. This has enhanced the status of women in the family as well as the society.

According to the report of the Committee on the Status of Women in India (1974), the number of female employees in the categories of professional, technical and related workers, primary and middle school teachers has been continuously rising since 1960. The Director General of Employment and Training data for selected professions in public and private sectors identify teaching, medical and health, clerical and related workers and telephone operators as the four occupations.

In the political field, women now enjoy equal rights with men. The two important rights in the political field sanctioned to women by Indian Constitution are: female enfranchisement and eligibility for the legislature. Prior to independence, when the elections were held in 1946 for constitutional assembly, many prominent women of Indian like Sarojini Naidu, Hansa Mehta, Renuka Rai and others were elected. In the first general election held in 1952, several women contested for the Lok Sabha.

After independence more women have joined different political parties. Some of them have captured seats of power as Chief Ministers, Cabinet Ministers, Deputy Ministers and Ministers of States.

Now all the political parties have a woman's cell or wing and some women leaders are in the position of president or secretary of party. Women of different parties are actively participating in campaigning and organising meetings at the time of elections. The families are always helping women to have a smooth entry in politics. Now politics is not the exclusive domain of men.

Many changes have taken place with respect to social life of Indian women. The 'new life' in city has altered the family relations. Social life of women has been altered because the husband and wife have begun to share a common social life which was not found in traditional family.

Attitude towards -segregation of sexes has also been changing. Coeducation has created an opportunity for intermixing of boys and girls. During leisure the women visit their friends' house. Boys take girls out to entertain them by taking to movies, restaurants and picnic.

Industrialisation has not only affected the joint family system, but also the relationship between the husband and the wife. The position of a woman as consultant is found in most families where she shares the responsibility of making the major family decisions with her husband or father. Now authority vests not only on eldest male but also on females.

It is well known that the freedom movement in India generated great awareness among women about their social right and their social responsibilities in the larger social order one result of this was the manifestation of a new creative urge among women in post-independent India.

The status of women and their social relationship as necessitated by the new social, political and economic organisation in society has come out through the routine factors of social change.

Undoubtedly in the period before 1947 there was a considerable change in thinking, outlook and value of Indian women. Subsequently Indian women have gradually moved towards self-reliance and independence. The status of Indian women through the ages has been changing and the status, which was lost during the middle ages and earlier parts of 19th century, has been regained somewhat. It appears that the status of women has gone high in India.

However the real position is that a large majority of women in the villages or women of low caste still suffers from injustice and inequalities.

If we look at them, we will notice that no social change of much importance has been brought about among them. Most of the women in villages are still illiterate and superstitious and do not participate in the political, social and economic life of the nation. Rural women have remained backward due to tradition, illiteracy, ignorance, superstition, social evils and many other factors. Hence, emancipation of women in rural India is an essential prerequisite for social progress of the nation.

- **1. Preamble of the Constitution - Equality provisions in fundamental Rights and Directive Principles of State Policy.**

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

In PREAMBLE, words "secure to ALL ITS CITIZENS" includes females too.

Condition of women in India has not been historically very good. As is evident from Manusmriti, women did not have much rights as compared to men. Further, the women are physically weaker than men and due to this fact also, they have been exploited. Due to such continuous unfavorable treatment, the social status of women has become really bad.

That women are naturally a weaker sex was first acknowledged by US supreme court in the case of **Muller vs Oregon 1908**. In this case, the US SC observed that due physical structure and performance of maternal functions, women are at a disadvantage in the society and thus it is society's responsibility to implement favorable laws to bring them on the same level as men.

The makers of Indian Constitution also understood this fact and have provided several provisions for elevating the status of women and giving them a level playing field. The following is a brief description of such provisions.

Fundamental Rights

Art 14

It says that the state shall not deny any person equality before law and equal protection of law in the territory of India. While this article is general in nature, it forms the bedrock for all other provisions. The principle of equality adopted in this article is that "like should be treated alike". This is the key principle for a social welfare state to ensure social and economic equality. The right to equality without the capability and the means to avail the benefits equally would be a cruel joke on the weaker sections. This concept of equality permeates throughout the entire constitution. This article facilitates the existence of other provisions that might seem discriminatory but are, in fact, not.

Art 15

While article 15(1) prohibits the state from discriminating on the basis of religion, race, caste, sex, or place of birth, art 15(3) allows the state to make special provisions for women and children. This is important because as espoused by art 14, it is imperative for the state to make laws as per the social condition of

various peoples. Art 15 merely elaborates that same concept and acknowledges that women need special treatment for their upliftment.

In the case of **Yusuf Abdul Aziz vs State of Bombay, AIR 1954**, SC held that section 497 of IPC is valid even though it punishes only the man for adultery and not the woman even if she has abetted the crime.

Art 16

Art 16 (1) ensures equality in employment in govt. services and art 16(2) explicitly prohibits any discrimination on the ground of sex among other grounds. Even though art 16 does not directly contain any provision specifically for women, in the case of **State of AP vs P B Vijayakumar AIR 1995**, SC held that a rule 22A introduced by AP govt. that gave preference to women over men was valid. SC held that it is not necessary to have a specific provision in art 16 because such a provision can be made under art 15(3) itself. It further noted that art 15(3) is a recognition of the fact that for centuries the women of this country are socially and economically handicapped. As a result they are unable to participate in the socio-economic progress of the country on an equal footing. Thus, making special provisions for women in employment is an integral aspect of 15(3). This power of art 15(3) is not whittled down any way in art 16.

Art 21

The courts have interpreted very widely the right to life and personal liberty. In several cases, this article has come to the rescue of women who have been wronged. In the case of **Bodhisatva Gautam vs Subhra Chakrabarti AIR 1996**, SC awarded interim compensation to the rape victim. Soon after that in the case of **Vishaka vs State of Raj, AIR 1997**, due to lack of any specific law, SC gave certain guidelines to prevent sexual harassment of women in workplace.

Art 23

Prohibits traffic in human beings and forced labor. This has improved the condition of women in terms of forced prostitution.

Directive Principles

Art 39 (a) Urges the state to provide equal right to adequate means of livelihood to men and women.

Art 39 (d) Equal pay for equal work for both men and women.

In the case of **Randhir Singh vs Union of India AIR 1982**, SC held that equal pay for equal work is a constitutional goal and is capable of being enforced.

Art 39 (e) State should ensure that men, women, and children are not forced into work that is unsuitable to their age or strength due to economic necessity.

Art 40/Art 243 D provides that 1/3 seats in panchayats shall be reserved for women.

Art 42 says that the state shall make provisions for securing just and humane working conditions and maternity relief.

Art 44 UCC

Due to absence of a uniform civil code, women are routinely exploited in the name of personal laws promulgated by religions. This fact was known to the makers of constitution and they urged the states to implement UCC.

In the case of **Sarla Mudgal vs Union of India, 1995, SC** urged the implementation of UCC by states.

Fundamental Duties

51 A (e) says that it is the duty of the citizens to renounce practices that are derogatory to the dignity of women.

Acts for the benefit of women

Several Acts have been passed for the improving the condition of women from time to time.

1. Dowry Prohibition Act 1961
2. Contract Labor Act 1970 as well as Factories Act 1948 provide that women cannot be employed in the night between 9 PM to 6 AM. Women cannot be required to work more than 9 hours.
3. Equal Remuneration Act 1976
4. The Indecent Representation of Women (Prohibition) Act 1986
5. The Commission of Sati (Prevention) Act 1987
6. Protection of Women from Domestic Violence Act 2005
7. Maternity Benefits Act 1961
8. Child Marriage Prohibition Act 1929

Ameliorative Measures for women

In the past 60 yrs of independence there has been quite a lot of work done towards the benefit of women. In initial 5 yr plans, the focus was on welfare of women. Later on the focus shifted to development and currently the focus is on empowerment. In 2001, National Policy for Women Empowerment was adopted. Its main points are –

1. To create an environment so that women feel involved in the making of economic and social policies.
2. To give equal share in social, economic, and political aspects.
3. To remove discrimination against women by enacting various laws.
4. To encourage equal treatment of women in the society.

The following are other measures adopted towards this end.

Swayamsidha Scheme - Implemented by joining Indira Awas Yojana and Mahila Samruddha Yojana, whose objective is to ensure the total development of women. Under this policy, women can directly control and audit the programs. It is implemented at gram and village panchayat level by Govt. as well as NGOs.

1. Swahdhar Scheme - It helps destitute women to learn vocation and financial support so that they can start earning on their own.
2. Kishori Shakti Yojana
3. Mahila Samriddhi Yojana
4. Maternity Benefits Scheme
5. Rashtriya Mahila Kosh
6. Scheme for working women's hostels
7. Development of women and children in rural areas
8. Margin Money Loan scheme

2. Negative Aspects of the Constitution - Exploitation of sex not mentioned in Article 23. A growing occurrence of rural prostitution, sex tourism, and traditional notions of gender bias contribute to the prevalence of prostitution and the sex trafficking in India. According to India's federal police, more than one million children are prostituted in India—"a source, transit nation, and destination" of the sexual-slavery industry. The actual numbers on sex trafficking in India are more difficult to ascertain because of

the “clandestine nature” of sex trafficking, but India’s Home Secretary commented that around 100 million people “were [also] involved in human trafficking in India.” Although most victims are girls who are trafficked within India, many are also girls who are trafficked across borders from Nepal and Bangladesh and sent to urban red light areas in Delhi, Mumbai, and Kolkata.

An internationally accepted definition of trafficking, as defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime (UN TIP Protocol), is the “recruitment, transportation, transfer, harbouring or receipt of persons” by using “force[,] . . . coercion, abduction, fraud, [and] deception” to control and exploit another person, including, but not limited to, sex exploitation.

The Indian Constitution under Article 23 specifically prohibits human trafficking, asserting that all citizens have the right to be protected from exploitation. Rampant and ongoing sex trade in India clearly violates the Indian Constitution and other domestic anti-trafficking legislation, and it simultaneously implicates India’s obligations under the many international treaties against trafficking in persons that India has ratified.

More than fifty years ago, India ratified without reservation the UN Convention for the Suppression of the Traffic in Persons, which instructs States Parties to punish any person who “[e]xploits the prostitution of another person,” even with the person’s consent. In Articles 1 and 2 of the Convention, it further instructs States Parties to punish any person who “procures, entices, or leads away” another person for the purposes of prostitution, a person who manages and finances brothels, and a person who knowingly rents out facilities “for the purpose of prostitution of others.”

Shortly after ratifying this Convention, India enacted domestic anti-trafficking legislation, the Immoral Traffic Prevention Act (ITPA) of 1956 (later amended in 1986). The ITPA punishes brothel owners, brothel managers, and traffickers with prison terms ranging from three years to life. The passage of this law indicates the legislature’s positive intent in fulfilling India’s international obligations. Despite this, the inclusion of Section 7, which penalizes those who prostitute in or near public places, and Section 8, which penalizes the solicitation of sex, both of which have in practice justified the police’s arrest and imprisonment of trafficked women who have been forced into prostitution and who have no knowledge or control over the brothel’s proximity to public places. Amending the law to exclude Sections 7 and 8 would decriminalize the activities of trafficking victims who are forced to solicit for sex. In 2006, a bill to amend the ITPA was proposed by India’s Ministry of Women and Child Development, which would decriminalize prostitution and instead would penalize prostitutes’ clients. The law currently contains provisions that penalize brothel owners, managers, and traffickers. However, the bill did not pass.

Most recently, in 2011, India signed the UN TIP, thus reaffirming the country’s desire to combat sex trafficking within the country. The goals of this protocol are to “prevent and combat trafficking” and “protect and assist the victims of such trafficking,” especially women and children.

The Ministry of Home Affairs also set up specialized police units in major Indian cities in 2011 with the sole task of investigating sex trafficking cases and arresting traffickers and brothel owners and managers. These police officers were specially trained and sensitized to understand how trafficking rings operate. However, the police lack the resources to investigate and make arrests on every trafficking case. For example, police in West Bengal have called for faster rehabilitation and effective “social welfare and judiciary systems” that can put violators of the ITPA on trial and ensure they are not “out on bail.” In Mumbai in 2011, 242 sex-trafficking cases were prosecuted and 125 sex-trafficking perpetrators were convicted in accordance with ITPA, resulting in prison terms of three years. Although these numbers indicate a positive change, the overall conviction rate is low. If the ITPA conviction rate remains low, it will allow traffickers to perpetuate and sustain the slave trade and the violation of victims’ basic human rights.

- **3. Different personal laws - unequal position of women.**

Contemporary India is a multicultural society that is pluralistic with regards to religious law. Different groups in India have separate religious personal laws (RPLs), which India’s secular state is reluctant to

reform. However, these laws have generated debate about the meaning of gender equality in India, since all RPLs to various extents give women fewer rights than men, but Indian women have been promised equality as a constitutional right. Though the RPLs allow for inclusiveness in religion, the history of these laws in India shows that they have been used selectively as a tool of governance and often to the disadvantage of women. In the past, feminists argued that various differences of identity—such as race, ethnicity, and sexuality—should be recognized and accounted for in the law. But in the case of India’s cultural pluralism, religious difference comes into conflict with gender equality. I argue for replacing the religious personal laws with gender-just family laws. Though this argument may seem exclusionary, cultural identity and gender justice do not have to be antithetical values. One way of pursuing both goals is to keep the historical and social specificities in the forefront of any discussions. It is possible to argue for common rights for all women by re-conceptualizing the feminist project as one of constructing inclusive legal theory that is sensitive to demands of differences but also those of justice.

The Origin of the Concept of Religious Personal Laws India’s legal system is a common law system—a relic of British imperialism that is at the same time very different from the original British common law. During colonization, novel ideas of utilitarianism and legal positivism informed many English innovations in India.¹ The usual organic relationship between a legal system and its society was violently disrupted doubly by this experiment. Indians came to have a legal system developed in response to the needs of a very different society, that of England. But whereas laws in England have abandoned or modified most of these legal concepts, India maintains the “tradition” of the colonial laws. The concept of religious personal laws is one of those ideas.

Historically, in Europe, the law made a distinction between personal (often ecclesiastical) laws and the legal codes of the territory as a whole. In India before colonization, however, Hindus and Muslims—with very few exceptions—were governed by their own respective laws. Colonization in India happened in a complex and geographically varied manner. Different parts of the country came under colonial control under different legal arrangements. British laws were introduced gradually and selectively and “personal matters” were to remain governed by the religious laws of these communities. However, the content of personal laws was determined almost randomly in the successive charters and regulations. Moreover, the substantive content of these rules was modified in judicial and legislative actions. The judicial role in this regard was significant even if unintentional. Gradually legislative changes were also introduced, but despite these changes the idea has persisted that the RPLs are immutable.

The practice of applying laws of religious communities in personal matters was regarded as the “saving” of religious laws, in part because of the language used. Different communities in India were identified by the religions they followed and the personal laws that the English administrators had decided to save were also in turn understood as religious, although in practice they could be community customs rather than scriptural rules. Thus religious laws and personal laws became interchangeable, and in the process Gender Inequality and Religious Personal Laws in India . It was forgotten that before the arrival of the British administrators, all aspects of the laws of Hindus and Muslims were religious. Moreover, British policies determined what should be designated as a personal matter, and of course the final shape of the laws governing such personal matters—whether administered by the English courts or legislated by the colonial parliaments—modified the religious laws of the people. One marked feature of most RPLs is that women have fewer rights than men. The history of legislative reforms of RPLs in the independent Indian state shows that the goal of gender equality is frequently subordinated to other political considerations. The state has selectively used the argument of religious sanctity of these laws but at other times introduced legislative changes. Most of the changes have been introduced in the Hindu Laws but the changes in the minority communities’ laws have been more halting. Ostensibly the minority status of some communities has been given priority over gender equality, but Hindu women have also not managed to gain complete parity of rights with men. The most recent reform, in 2005, of the Hindu Succession Act was proposed in order to make daughters equal coparceners; however, the legislation nevertheless still leaves women with lesser rights than men.⁴ It is in these particular circumstances that gender equality for Indian

women is more likely to be achieved by introducing a regime of common family law that would formulate rules so as to recognize the principle of gender equality as the defining feature of the law. Cultural Identity and Common Family Laws The dilemma faced by feminists asking for a common family law for all Indian women is that they must simultaneously answer the mainstream critics of feminism who challenge the demand for gender-sensitive laws and the men and women of minority communities who demand respect for cultural identity. In the following part I will briefly explain the context of feminist critiques of mainstream understandings of law and then argue that difference cannot be treated as good per se but must be pursued in a specific context. Uniform Law as the Guarantor of Fairness and Justice Liberalism and positivism have joined to formulate a view of modern law as autonomous of the economy and society, in contrast to earlier conceptions of law that relied on historical or theological explanations.

In this widely accepted view, the legitimate authority of law is dependent upon universal, neutral, and abstract principles. The law defines who is a legal subject and everyone who meets these requirements is entitled to One marked feature of most RPLs is that women have fewer rights than men, the same rights irrespective of their religion, wealth, gender, or any other characteristic. Liberal legalism in particular finds its legitimacy in this guarantee of non-arbitrariness, of fairness to everyone irrespective of their specific characteristics or differences. Legal feminists have extensively critiqued claims about the neutrality and universality of law. Traditionally feminist engagements with law are divided into three broad phases.

The earliest feminists, liberal feminists, argued for equal legal rights based upon the idea of the essential sameness of women and men. However, even after women gained formal equality it was obvious that men and women remained in a gender based hierarchical relationship. Feminists now explained that neutrality of law in effect maintained male privilege while portraying legal rules as gender neutral. This in turn gave rise to the sameness–difference debate in the feminist discourse: whether law should be gender neutral or gender specific. Feminists who demanded that the different needs and interests of women be acknowledged in law had to confront the charge that any deviation from neutral rules amounts to special or preferential treatment. The emphasis on difference has become more complex with the advent of post structural critiques about the essentialism of modernist thought. Post-structural theory has challenged the idea of universal rules on the grounds that any closure of definitions is exclusionary and therefore unjust. The category of woman is thus deconstructed to make evident the differences among women (e.g., race, ethnicity, sexuality, etc.). If woman is not a unified category, the implication is that not all women have similar interests, and thus feminist politics of reform and especially of legal reform becomes problematic. This development, known as the anti-essentialism idea in post-structural theory, has a consequence that cultural pluralism often comes at the cost of gender equality. These developments of western feminism did not have exact parallels for women in India. The political and social context for women in India was very different from the world of European women. The formal equality guaranteed in the Indian constitution has not been understood as extending to gender parity in RPLs. This contradiction rests on the use of religious (minority) identity for political purposes. The same constitution that guarantees gender equality also ensures the right to religious freedom and minority identity. That Indian women of different communities have yet to gain complete gender equality lends credence to feminist political philosopher Susan Moller Okin’s suggestion that multiculturalism is bad for women.

However, rather than simply reverting to the orthodoxy of universal rights, it might be more useful to contextualize the demand for different rights. It could and should be made incumbent upon those demanding different rights to explain how these demands are not antithetical to gender equality. The feminist challenge therefore is to acknowledge that gender equality demands more Gender Inequality and Religious Personal Laws than gender-specific laws; the very legal concepts need to change. This is the radical potential of feminist legal theory—it can reorient all legal theory to become more contextual and inclusive. Thus whether universal laws or different laws will serve the interests of women can only be answered in a specific context. Differences Matter The challenge now is to re-conceptualize categories of law in a manner that women’s interests are neither dismissed nor marginalized. Post-structuralism does

not mean either that all women must be treated the same or that no general rules can be formulated. Rather it demands that attention is paid to the consequences of recognizing differences. Therefore feminist analyses of law must constantly theorize the complex relationships between women and law by conceptualizing law as a site of struggle, meaning that law is not a pre-given or final. It is always an outcome of contestation and women like any other community have to constantly argue for gender-just laws. Moreover, what constitutes gender justice can only be a contingent definition under constant scrutiny, always available for redefining—which allows for many different voices to inform the content of law. This can be illustrated with a brief analysis of the enactment of domestic violence legislation in India.

Religious Personal Laws and Other Laws The enactment of the 2005 Domestic Violence [Prevention] Act (DVA) in the Indian Parliament raises a number of relevant issues for feminists seeking to understand law as a site of struggle. It is also an example of how the “wrong” of domestic violence needs very different remedies for women of Northern and Southern nations. The differences between the conditions of women in different societies ought to be recognized but always with the proviso that such recognition leads to a just or fair outcome. Women’s groups’ demand for a law on domestic violence was reiterated by the National Commission for Women and later adopted by the government. It is reasonable to ask what prompted the women’s groups to articulate this demand for a legal response to violence against women and what is it that the backers of the act hoped to achieve. Domestic violence arises in a specific socioeconomic context for most Indian women. The lack of real economic independence of most Indian women underpins the cultural construction of women as dependents. The so-called religious personal laws deny women even formal legal equality in personal relations. In this context it is no surprise that domestic violence is a real problem. The efforts of women’s groups to name this The so-called religious personal laws deny women even formal legal equality in personal relations problem and to seek legal redress for it are understandable but are informed by certain problematic ideas about the law. The DVA is an example of the effort to name certain social realities as a genderspecific harm suffered by women in India. Naming domestic violence as a subject of civil law is an important re-conceptualization. The proposed remedy for domestic violence however, is less than encouraging. The DVA has defined the major issue as the “right” of the woman complainant to stay in the matrimonial home. Thus when a woman, subject to violence, makes a legal complaint, the courts are empowered to allow her (to the exclusion of the violent husband) to occupy the home. In the absence of this law her only option would be to walk out of the house. Presumably, this law gives her time to make arrangements for getting out of a violent marriage, but this is where the wider social, economic, and cultural conditions block her exit. The high cultural premium on the idea of a woman’s place in the husband’s house is a social reality for most women. The economic underpinning of this cultural norm is the fact that most women are financially dependent. Furthermore, they cannot realistically expect either maintenance or a share of property on divorce. The right of residence in the matrimonial home (legally the husband’s house) therefore, is an empty achievement. The woman cannot live there indefinitely and nothing else in her circumstances has changed to enable her to be financially independent. Even if this law is a limited advance, why are Indian feminists so modest in their demands? No doubt they are acknowledging the particular social realities of Indian women, but a more integrated response is required. The domestic violence law is as much limited by the wider social, economic, and political contexts as our failure to challenge the inequalities built into the religious personal laws. A woman who seeks the protection of the DVA will invariably be economically dependent, and that dependence in itself is to a large extent underpinned by various laws. For example, the lack of rights in matrimonial property, illusory maintenance rights, deficient rights in agricultural land, and absence of employment opportunities maintain the inequalities. How then can the DVA change anything? Still, it is undeniable that for all its limitations, the law is a step forward in working towards gender justice. It of course does not mean that the struggles for all other kinds of equality rights are no longer necessary. Legal feminist discourse in India at present does not deal adequately with these fundamental issues. A possible explanation of this state of affairs is that, as a specific legacy of the history of colonization, legal scholarship in India is mostly caught in a time warp. In keeping with the conservative

view of legal knowledge as technical know how, most legal analyses in India restrict themselves to doctrinal emphases.²⁰ Legal scholarship that confines itself to examining the minutiae of the doctrine cannot engage with the interdisciplinary developments in legal theory elsewhere. This absence of theoretical Gender Inequality and Religious Personal Laws in India concerns can be illustrated by examining the developments related to the reform of aspects of Christian personal laws. Difference and Justice as Dual Feminist Goals The Divorce Act of 1869 governs the dissolution of marriage for two Christians. The British colonial administrators originally enacted this act to govern Indian Christian subjects. The act was reformed in 2001, after protracted community consultations and persistent demands by women’s organizations. There is no doubt that the amendments to the act are a major gain for Indian Christian women. Nevertheless, it is disturbing that in 2001 the Indian legislature, in consultation with women’s organizations, could endorse ideas about fault-based divorce laws, the concept of dependent domicile, and the concept of restitution of conjugal rights. In order to assess the scope of the amendments to this legislation and its suitability for the Indian Christians it is necessary, at the very least, to know the reasons behind this act and the relevant legal model used. The original IDA of 1869 was enacted as a follow up to the first Divorce Act in England. English law up to that point, in keeping with the ecclesiastical principles, did not allow for a Christian marriage to be dissolved. Social, economic, and religious changes in Europe resulted in a gradual acceptance of divorce in certain circumstances, manifested in the Married Women’s Right to Property Acts and the Divorce Act. In other words there was a correspondence between the social changes and the legal changes.

None of this correspondence existed in colonial India. Yet, the IDA of 1869 was enacted as a religious law for the Christian community. The model derived from the English divorce law, which was a major legislative innovation that was duly transferred to India in 1869. However, when the legislature of a long-independent India enacted an amendment to this law in 2001 and it insisted on retaining the “religious” grounds of divorce, it is surprising that legal scholars do not see this as incredulous. Feminist legal thinkers must surely be able to point out the anachronistic nature of this law, but instead the amendments are portrayed as a major gain for Indian Christian women. There is an almost total lack of discussion as to the ideal divorce law for women in the twenty-first century. The continued presence of fault-based grounds of divorce, the lack of recognition of marriage as a partnership, no mention of the concept of matrimonial property, or the anachronistic continuation of the idea of father as the natural guardian of a child makes divorce a very problematic remedy for women. The fact that women’s groups are the main force behind these changes makes it even more difficult to accept that appeasing religious and other community leaders takes priority over gaining a realistic right of divorce for Christian women. Political contingencies constrain the political activists, but no such hurdles exist for the legal feminist scholars: theirs is a disappointing silence. Unless systematic theoretical analysis becomes part of Indian legal scholarship, the level of critique will remain limited and gender equality will continue to be an afterthought rather than a core component of the law. Even though most of the international legal feminist literature is Eurocentric, it can nevertheless be a good starting point for Indian legal feminists to build specifically Indian legal theory. One of the peculiar legacies of being in a postcolonial country is the fact that the scholars can neither ignore the scholarship in the developed world countries nor employ it directly. Most legal thinkers in the developed world write as if the developing world simply has to catch up with the developed world, and ignore the specificities of postcolonial societies. For thinkers in the developing world, however, all scholarship is judged by its engagement with contemporary developments in the global North. That being said, Indian legal feminists can use these developments to illustrate that what constitutes knowledge, including feminist knowledge, has an effect of silencing the marginalized voices. The postmodernist insight that knowledge is constructed and partial can allow a space for arguments about the justice of law recognizing differences among people. Feminist legal thinkers can make the theoretical issues relate to the specific Indian conditions. For example, with regard to RPLs, the fundamental issue for legal scholars is whether the divide between religious and secular spheres is an adequate conceptual category. It is necessary to examine who deploys the religious–secular conceptual

divide and to what effect. In the Indian context the construct of religious identity of the various communities and in particular minority communities is in turn worthy of analysis. How and why religious personal laws become the chief marker of religious minority identity is a question that should lead into an in-depth analysis of the role of law in maintaining communities. The existence of religious personal laws that deny equality to women is usually discussed as an example of conflict in rights of equality and the right to culture, especially by the minorities. In liberal democratic societies the right to freedom of conscience is routinely recognized. But nowhere does this right extend to imposing one's view of religion on other people, even other members of one's own community. This is not a particularly novel situation faced by Indian thinkers. In all European states, personal laws originated in religious laws, but family laws are now secular. Nowhere has the existence of modern family laws given rise to the argument that they prevent people from being good Christians. Neither is there a credible argument made that in a Protestant country where divorce is allowed, the Roman Catholics are denied the right to cultural autonomy. It is not particularly radical to formulate the issue as one of comparing the compatibility of group rights and individual rights. In a liberal polity, how far the law Gender Inequality and Religious Personal Laws in India can or should go in upholding communal identities is a question that legal scholars ought to concern themselves with. It is worth repeating here that cultural/religious differences are not a good per se. If the discourse of difference is being used to deny women legal equality, it is incumbent upon the analysts to point that out and argue for a discourse of fairness in the law. The religious autonomy that various communities claim in turn invokes a simplistic notion of choice. Invariably there is no discussion of who is making the choice and whether the structural nature of hurdles in exercising choice makes it a futile concept for most women. With regard to personal matters it could be imagined that law, rather than enforcing religious authority, can facilitate equality by making all family laws gender non-discriminatory. Such a family law would not interfere with anyone's religious autonomy but neither will it enforce religiously sanctioned inequalities. The conceptual issue for legal scholars is to develop arguments that gender and religious autonomy can coexist. India, being a religiously plural society, faces this tension more so than many other societies. It is no surprise that most legal theory, developed in industrialized countries, does not concern itself with this issue. The specific responsibility of Indian legal scholars, feminists, and others is to develop ideas about the relationship between law and their social institutions. It is not enough to simply replicate ideas developed elsewhere and end up with the absurd situation that in contemporary India women are denied equality by reference to anachronistic laws that are now supported in the name of progressive pluralism.

4. Uniform Civil Code towards gender justice.

Uniform Civil Code: Towards Gender Justice

1.1 Introduction

Politics of our nation has become so ingrained in pacification with specific sections of the society that our fundamental right of free speech and expression cannot be protected by the State. As a consequence of this appeasement the level of tolerance has reduced and which resulted in complete disregard for the law of the country.

Uniform civil code of India is a term which refers to a concept of encompassing Civil Law Code in India. A uniform civil code is said to administer same set of civil laws which will be applicable to all irrespective of their religion, caste, gender, and tribes etc. This code will supersede all the personal laws which depend upon religion, caste and tribes. Such a uniform codes are there in most of the Modern Nations.

Article 44 of the Constitution recommends a uniform civil code which the State shall endeavor to secure the security of the citizens. This recommendation was given to the State to allow the State to integrate and unite itself after independence before having a uniform civil code. It was apprehended by the framers of the Constitution that an iron fist approach for enforcement of a uniform civil code would result in widespread religious unrest which can lead to the disintegration of the fragile union.

The common areas which are covered by a civil code are acquisition and accommodation of property, adoption, marriage and divorce.

1.2 Dissolution of Marriage

The personal laws in India are based on the religion of the person, thereby making its application selective in nature. But law should not be selective rather it should be uniform. There has been a lot of debate as to whether Section 125 of Cr.P.C is applicable to Muslim women or not. The decision of the Supreme Court in Mohd. Ahmed Khan v. Shah Bano answered this very question. The Court held that Sec 125 is applicable to all irrespective of their religion. After this very judgment our legislature passed an enacted called Muslim Women (Protection of Rights) Act, 1986. The constitutionality of this law was challenged in Daniel Latifi v. Union of India. The Supreme Court while applying the doctrine of harmonious construction and construed the enactment to be in compliance with the judgment of Shah Bano. The present position of Muslim women is that they are entitled to fair and reasonable maintenance under Section 125 of the CrPC so long as she remains unmarried after the divorce.

The Muslim Women (Protection of Rights) Act, 1986 went through a lot of criticism because non-Muslims believed it to be political stunt for elections. The Shah Bano case reflected how much personal laws are influenced by religion and politics. The Supreme Court even after many petitions for uniform civil code has denied interfering in the area of legislature but has reminded the parliament time and again about the presence of Article 44 of the Constitution.

1.3 Inheritance

The Indian Succession Act, 1925 is the general law on succession and inheritance in India but this is not mandatorily applicable to all because different religious groups are governed by their own personal laws on inheritance and succession like Hindus, Sikhs, Jains, Buddhists and Muslims. For those persons who have different faiths than Hindu and Muslim, the Indian Succession Act, 1925 applies.

There is very clear demarcation between the laws of succession and inheritance applicable to Hindus, Sikhs, Jains and Buddhist and Parsi, Christians and Jews with that of Muslims and with persons of inter faith marriages.

The properties of a Hindu male dying intestate devolve equally amongst his sons, daughter, widow and mother according to the Hindu Succession Act, 1956. However, the deceased husband, if he so desires, can write a Will and exclude his wife, which makes the provision of section 30 questionable in nature. The Will made by the deceased may contain bequeath of all his properties and no means of support to the widow this suggests that the gender inequalities in succession law proliferate extensively.

The joint family property of a Mitakshara Coparcenary devolves by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. This concept however takes a different route when the Mitakshara coparcener dies leaving behind a female relative claiming the property and in such an instance this undivided interest instead of devolving by survivorship devolves as provided under the Hindu Succession Act, 1956. This unequal treatment with female child has existed since ages and the amendment in 2005 attempted to reduce this inequality. The right of the daughter to demand a partition of the coparcenary property after the 2005 amendment is absolute and not subjected to any rider. The right of a daughter to demand partition of coparcenary property cannot be defeated even if she is converted to Muslim religion after her marriage. As far as her succession rights are concerned they are relatable only to the separate property of her father for which she has to wait till his death. The coparcener gets a right by birth in the coparcenary property and the death of the father is not a prerequisite for right to seek partition and demarcation of their shares. A daughter cannot ask for partition till the death of her father is not only wrong but appears to be against the spirit of the newly created coparcenary rights in favour of the daughter.

The Muslim Personal Law (Shariat) Application Act, 1937 governs the Muslims and Muslim women in India. The Shariat is regarded as the Custom or Usage for the purposes of division of all properties, except

agricultural land. Previously Muslims were governed by their local customs, laws and practices depending upon their domicile which ran contrary to the Shariat. The customary laws were highly discriminatory and it excluded daughters and widow from inheritance or succession which was contrary to the Shariat which provided daughters and widow the right to inheritance and succession but the shares of the daughters and widows were lower than a man. Therefore we can say that the Muslim laws are more discriminatory and provided least scope to the women to have a share in her husband's or father's property.

In the case of the Parsi community, a daughter gets equal share as that of the son and it is the same even for the widow. For the Parsi the question of gender equality seems irrelevant.

So by drawing reference from the above discussion we can conclude that the Hindu Law has tried to mend the inequalities prevailing between the opposite sex related to inheritance and succession. As far as Parsi law is concerned there never existed any inequality between sons and daughters for the share of their father's property. But the Muslim law is still predominantly in favour of males for the right to inheritance and succession.

1.4 Conclusion

General people have a wrong notion of civil code as being anti- religion. Civil code does not aim at removing the rituals and ceremonies attached to a particular religion; it only focuses on the rights while keeping intact the ceremonies. It tries to bring about a secular system reforming the existing personal laws based on religions which grossly discriminate women. But the superior sex and superior religion battle does not seem to agree with this very concept. The first women Chief Justice, Leila Seth, argued in favour of the uniform civil code by stating that it would help to break the shackles of unfair customary practices harmful to women and would provide them with individual identity. She also addressed the fear that such code might imperil religious freedom by saying that uniform civil code will not take away the right to perform religious ceremonies and rituals rather it would provide the women with equal rights relating to property and would protect her against polygamy and arbitrary divorce.

- **5. Indian tradition and family ideology: growth of feminism and schools of feminism.**

Feminism in India is a set of movements aimed at defining, establishing, and defending equal political, economic, and social rights and equal opportunities for Indian women. It is the pursuit of women's rights within the society of India. Like their feminist counterparts all over the world, feminists in India seek gender equality: the right to work for equal wages, the right to equal access to health and education, and equal political rights. Indian feminists also have fought against culture-specific issues within India's patriarchal society, such as inheritance laws and the practice of widow immolation known as Sati.

The history of feminism in India can be divided into three phases: the first phase, beginning in the mid-nineteenth century, initiated when male European colonists began to speak out against the social evils of Sati; the second phase, from 1915 to Indian independence, when Gandhi incorporated women's movements into the Quit India movement and independent women's organisations began to emerge; and finally, the third phase, post-independence, which has focused on fair treatment of women at home after marriage, in the work force and right to political parity.

Despite the progress made by Indian feminist movements, women living in modern India still face many issues of discrimination. India's patriarchal culture has made the process of gaining land-ownership rights and access to education challenging. In the past two decades, there has also emerged a disturbing trend of sex-selective abortion. To Indian feminists, these are seen as injustices worth struggling against.

As in the West, there has been some criticism of feminist movements in India. They have especially been criticised for focusing too much on women already privileged, and neglecting the needs and representation of poorer or lower caste women. This has led to the creation of caste-specific feminist organisations and movements.

Definition in the Indian context

Women's role in Pre-colonial social structures reveals that feminism was theorised differently in India than in the West. In India, women's issues first began to be addressed when the state commissioned a report on the status of women to a group of feminist researchers and activists. The report recognised the fact that in India, women were oppressed under a system of structural hierarchies and injustices. During this period, Indian feminists were influenced by the Western debates being conducted about violence against women. However, due to the difference in the historical and social culture of India, the debate in favor of Indian women had to be conducted creatively and certain Western ideas had to be rejected. Women's issues began to gain an international prominence when the decade of 1975–1985 was declared the United Nations Decade for Women.

Historical circumstances and values in India have caused feminists to develop a feminism that differs from Western feminism. For example, the idea of women as "powerful" is accommodated into patriarchal culture through religion, which has retained visibility in all sections of society. This has provided women with traditional "cultural spaces." Furthermore, in the West the notion of "self" rests in competitive individualism where people are described as "born free yet everywhere in chains." In India the individual is usually considered to be just one part of the larger social collective. Survival of the individual is dependent upon cooperation, and self-denial for the greater good is valued.

Indian women negotiate survival through an array of oppressive patriarchal family structures: age, ordinal status, relationship to men through family of origin, marriage and procreation as well as patriarchal attributes. Examples of patriarchal attributes include: dowry, siring sons etc., kinship, caste, community, village, market and the state. It should however be noted that several communities in India, such as the Nairs of Kerala, Shettys of Mangalore, certain Maratha clans, and Bengali families exhibit matriarchal tendencies. In these communities, the head of the family is the oldest woman rather than the oldest man. Sikh culture is also regarded as relatively gender-neutral.

In India, of communities recognized in the national Constitution as Scheduled Tribes, "some ... [are] matriarchal and matrilineal" "and thus have been known to be more egalitarian." According to interviewer Anuj Kumar, Manipur, "has a matriarchal society", but this may not be a scholarly assessment. This is because though mothers there are in forefront of most of the social activism, the society has always been patriarchal. Their women power is visible because of historical reasons. Manipur was ruled by strong dynasties and the need for expansions of borders, crushing any outsider threats, etc. engaged the men. So, women had to take charge of home-front.

In Muslim families, women and men are considered equal, but not in the westernized sense. The Quran teaches that the minds of males and females work differently and are generally different biologically. Therefore, Islam grants different rights to the husband and wife. One such right which the wife owes to her husband is being head of the household.

The heterogeneity of the Indian experience reveals that there are multiple patriarchies, contributing to the existence of multiple feminisms. Hence, feminism in India is not a singular theoretical orientation; it has changed over time in relation to historical and cultural realities, levels of consciousness, perceptions and actions of individual women, and women as a group. The widely used definition is "An awareness of women's oppression and exploitation in society, at work and within the family, and conscious action by women and men to change this situation." Acknowledging sexism in daily life and attempting to challenge and eliminate it through deconstructing mutually exclusive notions of femininity and masculinity as biologically determined categories opens the way towards an equitable society for both men and women.

The male and female dichotomy of polar opposites with the former oppressing the latter at all times is refuted in the Indian context because it was men who initiated social reform movements against various social evils. Patriarchy is just one of the hierarchies. Relational hierarchies between women within the same family are more adverse. Here women are pitted against one another. Not all women are powerless at all times.

There have been intense debates within the Indian women's movements about the relationship between Western and Indian feminisms. Many Indian feminists simultaneously claim a specific "Indian" sensitivity as well as an international feminist solidarity with groups and individuals worldwide. The rise of liberal feminism in the West in the 1970s focused deeply on demands for equal opportunities in education and employment, as well as ending violence against women. To a large extent, the emerging feminist movement in India was influenced by Western ideals. These called for education and equal rights, but also adapted their appeals to local issues and concerns, such as dowry-related violence against women, Sati, sex selective abortion and custodial rape. Some Indian feminists have suggested that these issues are not specifically "Indian" in nature but rather a reflexion of a wider trend of patriarchal oppression of women.

History

Unlike the Western feminist movement, India's movement was initiated by men, and later joined by women. The efforts of these men included abolishing sati, which was a widow's death by burning on her husband's funeral pyre, abolishing the custom of child marriage, abolishing the disfiguring of widows, introducing the marriage of upper caste Hindu widows, promoting women's education, obtaining legal rights for women to own property, and requiring the law to acknowledge women's status by granting them basic rights in matters such as adoption.

The 19th century was the period that saw a majority of women's issues come under the spotlight and reforms began to be made. Much of the early reforms for Indian women were conducted by men. However, by the late 19th century they were joined in their efforts by their wives, sisters, daughters, proteges and other individuals directly affected by campaigns such as those carried out for women's education. By the late 20th century, women gained greater autonomy through the formation of independent women's own organisations. By the late thirties and forties a new narrative began to be constructed regarding "women's activism". This was newly researched and expanded with the vision to create 'logical' and organic links between feminism and Marxism, as well as with anti-communalism and anti-casteism, etc. The Constitution of India did guarantee 'equality between the sexes,' which created a relative lull in women's movements until the 1970s.

During the formative years of women's rights movements, the difference between the sexes was more or less taken for granted in that their roles, functions, aims and desires were different. As a result, they were not only to be reared differently but treated differently also. Over the course of time, this difference itself became a major reason for initiating women's movements. Early 19th century reformers argued that the difference between men and women was no reason for the subjection of women in society. However, later reformers were of the opinion that indeed it was this particular difference that subjugated women to their roles in society, for example, as mothers. Therefore, there was a need for the proper care of women's rights. With the formation of women's organisations and their own participation in campaigns, their roles as mothers was again stressed but in a different light: this time the argument was for women's rights to speech, education and emancipation. However, the image of women with the mother as a symbol underwent changes over time – from an emphasis on family to the creation of an archetypal mother figure, evoking deep, often atavistic images.

First phase: 1850-1915



Maharani Jind Kaur, the youngest wife of Maharaja Ranjit Singh, was renowned for her beauty, energy and strength of purpose. But her fame is derived chiefly from the fear she engendered in the British, who described her as "the Messalina of the Punjab", a seductress too rebellious to be controlled.

The colonial venture into modernity brought concepts of democracy, equality and individual rights. The rise of the concept of nationalism and introspection of discriminatory practices brought about social reform movements related to caste and gender relations. This first phase of feminism in India was initiated by men to uproot the social evils of sati (widow immolation), to allow widow remarriage, to forbid child marriage, and to reduce illiteracy, as well as to regulate the age of consent and to ensure property rights through legal intervention. In addition to this, some upper caste Hindu women rejected constraints they faced under Brahminical traditions. However, efforts for improving the status of women in Indian society were somewhat thwarted by the late nineteenth century, as nationalist movements emerged in India. These movements resisted 'colonial interventions in gender relations' particularly in the areas of family relations. In the mid to late nineteenth century, there was a national form of resistance to any colonial efforts made to 'modernise' the Hindu family. This included the Age of Consent controversy that erupted after the government tried to raise the age of marriage for women.

Several Indian states were ruled by women during British colonial advance including Jhansi (Rani Laxmibai), Kittur(Rani Chennama), Bhopal (Quidisa Begum) and Punjab (Jind Kaur).

Second Phase: 1915-1947

During this period the struggle against colonial rule intensified. Nationalism became the pre-eminent cause. Claiming Indian superiority became the tool of cultural revivalism resulting in an essentialising model of Indian womanhood similar to that of Victorian womanhood: special yet separated from public space. Gandhi legitimised and expanded Indian women's public activities by initiating them into the non-violent civil disobedience movement against the British Raj. He exalted their feminine roles of caring, self-abnegation, sacrifice and tolerance; and carved a niche for those in the public arena. Peasant women played an important role in the rural satyagrahas of Borsad and Bardoli. Women-only organisations like All India Women's Conference (AIWC) and the National Federation of Indian Women(NFIW) emerged. Women were grappling with issues relating to the scope of women's political participation, women's franchise, communal awards, and leadership roles in political parties.

The 1920s was a new era for Indian women and is defined as 'feminism' that was responsible for the creation of localised women's associations. These associations emphasised women's education issues,

developed livelihood strategies for working-class women, and also organised national level women's associations such as the All India Women's Conference. AIWC was closely affiliated with the Indian National Congress. Under the leadership of Mahatma Gandhi, it worked within the nationalist and anti-colonialist freedom movements. This made the mass mobilisation of women an integral part of Indian nationalism. Women therefore were a very important part of various nationalist and anti-colonial efforts, including the civil disobedience movements in the 1930s.

After independence, the All India Women's Conference continued to operate and in 1954 the Indian Communist Party formed its own women's wing known as the National Federation of Indian Women. However, feminist agendas and movements became less active right after India's 1947 independence, as the nationalist agendas on nation building took precedence over feminist issues.

Women's participation in the struggle for freedom developed their critical consciousness about their role and rights in independent India. This resulted in the introduction of the franchise and civic rights of women in the Indian constitution. There was provision for women's upliftment through affirmative action, maternal health and child care provision (crèches), equal pay for equal work etc. The state adopted a patronising role towards women. For example, India's constitution states that women are a "weaker section" of the population, and therefore need assistance to function as equals. Thus women in India did not have to struggle for basic rights as did women in the West. The utopia ended soon when the social and cultural ideologies and structures failed to honour the newly acquired concepts of fundamental rights and democracy.

Post-1947



Indira Gandhi (née Nehru) was the only child of the India's first Prime Minister, Jawaharlal Nehru. She is the first and only woman Prime Minister of India and the second-longest-serving Prime Minister.

Post independence feminists began to redefine the extent to which women were allowed to engage in the workforce. Prior to independence, most feminists accepted the sexual divide within the labour force. However, feminists in the 1970s challenged the inequalities that had been established and fought to reverse them. These inequalities included unequal wages for women, relegation of women to 'unskilled' spheres of work, and restricting women as a reserve army for labour. In other words, the feminists' aim was to abolish the free service of women who were essentially being used as cheap capital. Feminist class-consciousness also came into focus in the 1970s, with feminists recognising the inequalities not just between men and women but also within power structures such as caste, tribe, language, religion, region,

class etc. This also posed as a challenge for feminists while shaping their overreaching campaigns as there had to be a focus within efforts to ensure that fulfilling the demands of one group would not create further inequalities for another. Now, in the early twenty-first century, the focus of the Indian feminist movement has gone beyond treating women as useful members of society and a right to parity, but also having the power to decide the course of their personal lives and the right of self-determination.

In 1966 Indira Gandhi became the first female Prime Minister of India. She served as prime minister of India for three consecutive terms (1966–77) and a fourth term from 1980 until she was assassinated in 1984.

The state of Kerala is often viewed as the ideal progressive leader in the women's rights movement in India among states. Kerala maintains very high relative levels of female literacy and women's health, as well as greater female inheritance and property rights. For example, a 1998 study conducted by Bina Agarwal found that while only 13% of all women in India with landowning fathers inherited that land as daughters, 24% of such women were able to do so in the state of Kerala.^[29] This is important because it has been shown that measures to improve such access to property and economic independence through channels such as education not only directly improve women's wellbeing and capabilities, but also reduce their risk of exposure to marital or any sort of domestic violence.

Issues

Despite "on-paper" advancements, many problems still remain which inhibit women from fully taking advantage of new rights and opportunities in India.

There are many traditions and customs that have been an important part of Indian culture for hundreds of years. Religious laws and expectations, or "personal laws" enumerated by each specific religion, often conflict with the Indian Constitution, eliminating rights and powers women should legally have. Despite these crossovers in legality, the Indian government does not interfere with religion and the personal laws they hold.^[30] Religions, like Hinduism, call for women to be faithful servants to God and their husbands. They have a term called *pativrata* that describes a wife who has accepted service and devotion to her husband and his family as her ultimate religion and duty. Indian society is largely composed of hierarchical systems within families and communities. These hierarchies can be broken down into age, sex, ordinal position, kinship relationships (within families), and caste, lineage, wealth, occupations, and relationship to ruling power (within the community). When hierarchies emerge within the family based on social convention and economic need, girls in poorer families suffer twice the impact of vulnerability and stability. From birth, girls are automatically entitled to less; from playtime, to food, to education, girls can expect to always be entitled to less than their brothers. Girls also have less access to their family's income and assets, which is exacerbated among poor, rural Indian families. From the start, it is understood that females will be burdened with strenuous work and exhausting responsibilities for the rest of their lives, always with little to no compensation or recognition.

India is also a patriarchal society, which, by definition, describes cultures in which males as fathers or husbands are assumed to be in charge and the official heads of households. A patrilineal system governs the society, where descent and inheritance are traced through the male line and men are generally in control of the distribution of family resources.

These traditions and ways of Indian life have been in effect for so long that this type of lifestyle is what women have become accustomed to and expect. Indian women often do not take full advantage of their constitutional rights because they are not properly aware or informed of them. Women also tend to have poor utilisation of voting rights because they possess low levels of political awareness and sense of political efficacy. Women are not often encouraged to become informed about issues. Due to this, political parties do not invest much time in female candidates because there is a perception that they are a "wasted investment."

The female-to-male ratio in India is 933 to 1000, showing that there are numerically fewer women in the country than men. This is due to several factors, including infanticides, most commonly among female

infants, and the poor care of female infants and childbearing women. Although outlawed, infanticides are still highly popular in rural India, and are continuing to become even more prominent. This is due to the fact, most especially in rural areas, that families cannot afford female children because of the dowry they must pay when their daughter gets married. Like infanticide, the payment of dowry is also illegal, but is still a frequent and prevalent occurrence in rural India.^[32] Women are considered to be "worthless" by their husbands if they are not "able" to produce a male child, and can often face much abuse if this is the case.

Birth ratio

Between the years of 1991 to 2001, the female-male ratio of the population of India fell from 94.5 girls per 100 boys to 92.7 girls per 100 boys. Some parts of the country, such as Kerala, did not experience such a decline, but in the richer Indian states of Punjab, Haryana, Gujarat, and Maharashtra, the female-male ratio fell very sharply (the female-male ratios in these states were between 79.3 and 87.8). This is evidence of natality inequality, and an indication that sex-selective abortion has become more pervasive. The Indian parliament has banned the use of sex determination techniques for foetuses due to this, but enforcement of this law has been largely ignored.^[34]

Marriage

Most of the average Indian woman's life is spent in marriage; many women are still married before the legal age of 18, and the incidence of non-marriage is low in India. Childbearing and raising children are the priorities of early adulthood for Indian women. Thus, if they enter the workforce at all, it is far later than Indian men. Urban Indian men reach the peak of their labour force participation between the ages of 25 and 29, while urban Indian women do so between the ages of 40 and 44.^[4] Because of this, women have less time for the acquisition of skills and fewer opportunities for job improvements.

There is a poor representation of women in the Indian workforce. Females have a ten percent higher drop-out rate than males from middle and primary schools, as well as lower levels of literacy than men. Since unemployment is also high in India, it is easy for employers to manipulate the law, especially when it comes to women, because it is part of Indian culture for women not to argue with men. Additionally, labour unions are insensitive to women's needs. Women also have to settle for jobs that comply with their obligations as wives, mothers, and homemakers.^{[4][32]}

Muslim personal law (MPL)

One of the major issues are aspects of *sharia* (Islamic law) known as Muslim personal law (MPL) or Muslim family law. Some of the thorny issues regarding the way in which MPL has thus far been formulated include polygyny, divorce, custody of children, maintenance and marital property. In addition, there are also more macro issues regarding the underlying assumptions of such legislation, for example, the assumption of the man as head of the household.

Dress code

Another issue that concerns women is the dress code expected of them. Islam requires both men and women to dress modestly; this concept is known as *hijab* and covers a wide interpretation of behavior and garments. There is mixed opinion among feminists over extremes of externally imposed control. Women from other religions are also expected to follow dress codes.

Theology

Hindu feminism

In the Hindu religion, there has been partial success in terms of gender equality reform laws and family law. While this is a major advancement relative to other religions in India, it is still not a complete triumph in terms of feminism and relieving oppression.^[30] Gandhi came up with the term *stree shakti* (women

power) for the concept of womanhood. In the Hindu religion, Gods are not exclusively male. Hinduism sheds a positive light on femininity; females are considered to complement and complete their male counterparts. It is important to note that both the deity of knowledge and the deity of wealth are female.^[19] There has been some criticism from Dalit groups that Indian feminism tends to represent "upper caste" and upper class Hindu women, while ignoring and marginalising the interests of Dalit women. Debates on caste and gender oppression have been furthered by Other Backward Class(OBC) members of different political parties, arguing in state assemblies that "lower caste" women's interests are best represented by women from these castes.^[7] Working towards this end, women within Dalit castes have formed organisations such as the All India Dalit Women's Forum and the National Federation of Dalit Women and Dalit Solidarity, which focus on the gendered implications of caste based violence and oppression, such as the ways in which Dalit women suffer from urban poverty and displacement.^[7]

Islamic feminism



The symbol for Islamic feminism.

The Hindu and Muslim communities in India were treated differently by the government in that separate types of concessions were made for each community in order to accommodate their separate religious laws and regulations. The case of Shah Bano begun in 1985 was one such example of Rajiv Gandhi attempting to make "concessions" for the Muslim community to in turn secure support for the Congress. Shah Bano, a 73-year-old Muslim woman, was divorced by her husband after forty-three years of marriage. According to the Sharia or Muslim Law, her husband was not required to pay her alimony. Shah Bano challenged this decision in the Supreme Court, which ultimately ruled in her favour and ordered her husband to pay her a monthly maintenance allowance. This caused chaos amongst the Muslim clerics who denounced the judgement and suggested that their religion, Islam was under attack in the country. In a fear of losing overall Muslim support, Rajiv succumbed to the pressures of the Conservative Moulvis from Muslims community and his own party and backed the Muslim Women (Protection of Rights on Divorce) Bill which restricts alimony for Muslim Women only for 90 days after divorce. This caused an outcry from Muslim feminists and Hindu nationalists who found the appeasement of Muslim males by the Congress for political purposes wrong and opportunistic.

Feminism was challenged by various minority groups for not entirely addressing the needs of minority populations. It was suggested that 'mainstream' feminism was upper caste and Hindu in its orientation and did not address the concerns of minority women. This led to the formation of the Awaaz-e-Niswaan (The Voice of Women) in 1987 in Mumbai in largely Muslim part of the city. The Muslim community has

personal laws that often were considered harmful to the rights of Muslim women. The Muslim personal law allows Polygamy but not Polyandry.

Impact

Western-educated Indians introduced equality in the early nineteenth century. However, the term did not gain meaning or become an operational principle in Indian life until the country gained independence in 1947 and adopted a democratic government. The Indian Constitution then granted equality, freedom from discrimination based on gender or religion, and guaranteed religious freedoms. Also, seven five-year plans were developed to provide health, education, employment, and welfare to women. The sixth five-year plan even declared women "partners in development."

Employment

In general, in the uneducated and rural sections of Indian society, which form a major percentage of the total population, women are seen as economic burdens. Their contributions to productivity are mostly invisible as their familial and domestic contributions are overlooked. Indian women were contributing nearly 36 percent of total employment in agriculture and related activities, nearly 19 percent in the service sector, and nearly 12.5 in the industry sector as of the year 2000. High illiteracy rates among women confine them to lower paying, unskilled jobs with less job security than men. Even in agricultural jobs where the work of men and women are highly similar, women are still more likely to be paid less for the same amount and type of work as men.

In 1955 the Bollywood group Cine Costume Make-Up Artist & Hair Dressers' Association (CCMAA) created a rule that did not allow women to obtain memberships as makeup artists.^[39] However, in 2014 the Supreme Court of India ruled that this rule was in violation of the Indian constitutional guarantees granted under Article 14 (right to equality), 19(1)(g) (freedom to carry out any profession) and Article 21 (right to liberty).^[39] The judges of the Supreme Court of India stated that the ban on women makeup artist members had no "rationale nexus" to the cause sought to be achieved and was "unacceptable, impermissible and inconsistent" with the constitutional rights guaranteed to the citizens.^[39] The Court also found illegal the rule which mandated that for any artist, female or male, to work in the industry, they must have domicile status of five years in the state where they intend to work.^[39] In 2015 it was announced that Charu Khurana had become the first woman to be registered by the Cine Costume Make-Up Artist & Hair Dressers' Association.

Globalisation

Feminists are also concerned about the impact of globalisation on women in India. Some feminists argue that globalization has led to economic changes that have raised more social and economical challenges for women, particularly for working-class and lower-caste women. Multinational companies in India have been seen to exploit the labour of 'young, underpaid and disadvantaged women' in free trade zones and sweat shops, and use "Young lower middle class, educated women," in call centres. These women have few effective labour rights, or rights to collective action.

In addition to this, multinational corporations are seen to advertise a homogenous image of ideal women across the country is argued to cause an increase in the commodification of women's bodies. This is also manifested in the form of nationalist pride exhibited through Indian women winning international beauty pageants. According to some feminists, such developments have offered women greater sexual autonomy and more control over their bodies. However, many other feminists feel that such commodification of female bodies has only served the purpose of feeding to male fantasies.

Education

Some of the main reasons that girls are less likely to reach optimal levels of education include the fact that girls are needed to assist their mothers at home, have been raised to believe that a life of domestic work is

their destined occupation, have illiterate mothers who cannot educate their children, have an economic dependency on men, and are sometimes subject to child-marriage.

In 1986, the National Policy on Education (NPE) was created in India, and the government launched the programme called Mahila Samakhya, whose focus was on the empowerment of women. The programme's goal is to create a learning environment for women to realise their potential, learn to demand information and find the knowledge to take charge of their own lives. In certain areas of India, progress is being made and an increase in the enrolment of girls in schools and as teachers has begun to increase. By 2001 literacy for women had exceeded 50% of the overall female population, though these statistics were still very low compared to world standards and even male literacy within India. Efforts are still being made to improve the level of education that females receive to match that of male students.

Modernization

Modern influences are affecting the younger generations in parts of India, where girls are beginning to forgo the more traditional ways of Indian life and break gender stereotypes. In more flourishing parts of the country, the idea of "dating", or more specifically *openly* dating, has come into play, and the terms "girlfriend" and "boyfriend" are being used. Some women have landed highly respectable careers, and can be seen across Bollywood billboards and advertisements. However, this is not the norm throughout the country; such modernisations and the women behind them face serious resistance from anti-liberalists. The country is still severely male-dominant and unwelcoming to such movements that go against sex and gender traditions in India.^[44]

Indian feminists



Interview of Pink Chaddi Campaign activist Namita Malhotra speaking about the movement's beginnings. (Courtesy: Frederick Noronha) The Campaign is a nonviolent protest movement launched by *Consortium of Pub-Going, Loose and Forward Women* in response to violent conservative and right-wing activism against perceived violations of Indian culture, when a group of women were attacked in a pub in Mangalore.

- Bina Agarwal - deals especially with the connectedness of gender inequality, social exclusion, property, and development. She is also the ex-President of the International Association for Feminist Economics.
- Lalithambika Antharjanam - author and social reformer whose work reflected women's roles in society.
- Barnita Bagchi - scholar and sociologist with a focus on women's education.
- Jasodhara Bagchi - founder of the School of Women's Studies at Jadavpur University.
- Rita Banerji - Feminist author and founder of The 50 Million Missing Campaign, an online, global lobby working to raise awareness about the female gendercide (femicide) in India.
- Durgabai Deshmukh - She was a public activist for women's emancipation and was also the founder of Andhra Mahila Sabha.

- Sarala Devi Chaudhurani – early feminist and founder of the Bharat Stree Mahamandal, one of the first women's organisations in India.
- Prem Chowdhry - social scientist, feminist, Senior Academic Fellow and critic of violence against couples refusing arranged marriages. She is a Life Member of the Center for Women Studies. She is a well-known scholar of gender studies, authority on the political economy and social history of Haryana state in India and daughter of Hardwari Lal, the renowned educationist and Indian National Congress member of parliament for Haryana.
- Saroj Nalini Dutt – early social reformer who pioneered the formation of educational Women's Institutes in Bengal.
- Mira Datta Gupta – activist for women's issues and one of the founding members of the All India Women's Conference.
- Padma Gole – poet whose writings faithfully depicted the domestic lives of Indian middle-class women.
- Devaki Jain – founder of the Institute of Social Studies Trust and scholar in the field of feminist economics.
- Brinda Karat – first woman member of the CPI(M) Politburo and former Vice President of the All India Democratic Women's Association (AIDWA).
- Madhu Kishwar - Founder President of Manushi Sangathan, a forum that will promote greater social justice and strengthen human rights, especially for women. She founded the magazine *Manushi: A Journal about Women and Society* devoted to feminism as well as to gender studies and activism in 1978 with Ruth Vanita
- Vina Mazumdar – secretary of the first Committee on the Status of Women in India and founding Director of Centre for Women's Development Studies (CWDS).

Renaissance
Law College

UNIT-III

UNIT-III Sex Inequality in Inheritance Rights

INHERITANCE AND SUCCESSION-

- The general law relating to the inheritance and succession can easily be referred to The Indian Succession Act, 1925. Under this Act every Indian is entitled to equal shares on inheriting the property on the death of a person. The exceptions are Hindus, Sikhs, Jains, Buddhists and Muslims as they are governed under separate laws of succession. As for the persons of different faiths than Hinduism and Mohammedan, the Indian Succession Act, 1925 applies.
- 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.
- Laws of succession applicable to Christians and Jews; for the intestate the governing law is the Indian Succession Act, 1925 specifically under section 31 to 49 of the Act.
- Laws of succession governing Muslims; for non-testamentary succession the The Muslim Personal Law (Shariat) Application Act, 1937 is applicable and where a muslim has died testate, the issue has to be governed under the Indian Succession Act, 1925 where a Will relates to immovable property situate within the State of West Bengal, and that of Madras and Mumbai Jurisdiction.
- Laws of succession in case of inter faith marriages, under Special Marriage Act, 1954.
- Under Hindu Succession Act, 1956, the properties of a Hindu male dying intestate devolves, in the first instance, equally on his sons, daughters, widow and mother and include the specified heirs of predeceased sons or daughters. The widow of the deceased is entitled to inherit equally with sons and daughters. The provisions of section 30 of the Act raise issues which are questionable in nature whereby the deceased husband, if he so desires, may write a Will and exclude his wife. The Will may contain bequeath of all his properties and no means of support to the widow.
- If there be a meticulous reasoning, the rights of the Women and Daughters under the Hindu Succession Act can be resolved; the Gender inequalities in succession law proliferate extensively. Another aspect which is equally complicated is The Streedhan — Streedhan is the property held by a woman in India and treating the Streedhan on the death of the husband is also to be redressed by making suitable changes by the Parliament and address these and many other issues in the biased inheritance law under the Hindu Succession.
- The law applicable to India can be said to be unlike for the State of Maharastra where the women and more particularly the daughters have dual advantage. A daughter is entitled to a share in the father's Hindu undivided family, generally regarded as (HUF) as well as a share in the husband's HUF. This again is meager and notional shares which at times take unending time in the legal foray in situations where the male heirs do not approach the court for the division of the property of the deceased.
- Under the Mitakshara teachings, the joint family property devolves by survivorship and when a male Hindu dies after the commencement of this Act having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. The concept

however is viewed differently when the Mitakshara coparcener dies leaving behind a female relative or male relative claiming through Class I, this undivided interest will not devolve by survivorship but by succession as provided under the Hindu Succession Act, 1956. Class I heirs are Son, Daughter, Widow, Mother, Son of a predeceased son, Daughter of predeceased son, Widow of predeceased son, Son of a predeceased daughter, Daughter of predeceased daughter, Son of predeceased son of predeceased son, Daughter of predeceased son of a predeceased son, Widow of predeceased son of a predeceased son.

- The Indian Succession Act, 1925, states that everyone is entitled to equal inheritance, barring exceptions to Hindus, Sikhs, Jains, Buddhists and Muslims. Under the act, the daughter of a person dying intestate would be entitled only to one-fourth of the son's share, or Rs. 5,000/-, whichever is lesser, this amount is also termed as Streedhan and this entitlement excludes the women from any further right in seeking a proper division of the properties of the deceased. The bias and gender deprecation is the only factor that the Indian women and daughters are isolated and remain dependent on the male heirs for their share and right in the seeking distribution of the property and giving rise to differences in the families and long legal battles.
- The concept of Mitakshara coparcenary, in a joint family is to be analysed in the light of the current status of a women who is regarded equal to a man. This is unreal and the logistics with regard to the shares in the property under the Hindu Succession Act, 1956 speaks all. A daughter will get a small share of property compared to the son. The father's property is equally shared between brother and sister. In addition, the brother is entitled to a share in the coparcenary from which the sister is excluded. A good example to explain this anomaly is to the right of a daughter in the residence is only confined to the possession and not of ownership in the family owned house.
- In order to set at rest the long drawn legal battles and animosity among the heirs of the deceased, the law of succession should be emphatically amended to provide and give equal inheritance to all, irrespective of the gender discrimination and bias. Special emphasis to property distribution among Hindus, the succession right by birth should be abolished and the Mitakshara coparcenary should be converted into Dayabhaga, which means equal distribution of not only separate or self acquired properties of the diseased male, but also of undivided interests in coparcenary property. It should also consider a daughter of a coparcener in a HUF under Mitakshara law to be coparcener by birth as of a son on the right of claim in the property in equal shares in the coparcenary property.

- **1. Continuance of feudal Institutions of joint family – women's inheritance position under Hindu Law.**

Indian feudalism refers to the feudal society that made up India's social structure until independence in 1947.

Use of the term feudalism to describe India applies a concept of medieval European origin, according to which the landed nobility held lands from the Crown in exchange for military service, and vassals were in turn tenants of the nobles, while the peasants (villeins or serfs) were obliged to live on their lord's land and give him homage, labor, and a share of the produce, notionally in exchange for military protection. The term **Indian feudalism** is an attempt to classify Indian history according to a European model.

Historians have become very reluctant to classify other societies into European models and today it is rare for Indian history to be described as feudal by academics; it still done in popular usage, however, but only for pejorative reasons to express disfavour, typically by critics. These include zamindar, jagirdar, sardar, mankari, desh mukh, chaudhary and samanta. Most of these "systems" were abolished after the independence of India and the rest of the Subcontinent. D. D. Kosambi and R. S. Sharma, together with Daniel Thorner, brought peasants into the study of Indian history for the first time.

When we say that the joint family is disintegrating, we do not mean its disappearance. We only mean a decrease in the number of joint households. The causes leading to the disintegration of the joint family in the Indian context are as follows:

1. Industrialization:

So far as rural economic system was concerned, the joint family was a unit of both production and consumption. But with the arrival of industrial economy, the family no longer functions as a unit of production. On the contrary, it has become essentially a unit of consumption.

Under such circumstances the maintenance of the joint family has been rendered extremely difficult. Moreover, the establishment of factories and industries in the countryside has led to the closure of small scale and cottage industries.

The workers are forced to migrate to the towns and cities in search of employment. This has resulted in the disintegration of the joint family.

2. Urbanization:

Urbanization has also led to the weakening of the joint family system in India. The amenities of urban life in the form of better transport and communication, better employment opportunities, better educational facilities, and developed health care facilities attract the ruralites to the towns and cities. Naturally there is a rural to urban type of migration.

Such exodus of rural population to urban centres has given rise to the problem of accommodation. Further, by emphasising individuality and privacy urbanization encouraged the urbanites to opt for small families.

In this way the urban living weakens joint family pattern and strengthens nuclear family patterns. The studies conducted by Aileen Ross, M. S. Gore, Milton Singer subscribe to this fact.

3. Modern education:

The role of modern education in bringing about the disintegration of the joint family is no less significant. Modern education inspires individualism among the people. Further, educated men and women in the countryside are forced to leave their families in search of suitable jobs.

After getting jobs they finally settle in regions that are far away from their ancestral homes. There ends the 'common-roof arrangement'. They gradually sever the links with their natal families which subsequently leads to breakdown in the joint family.

4. Enlightenment of women:

Enlightenment of women is also responsible for the disintegration of the joint family. The young educated women, being fully conscious of their new rights and status in society, are now not prepared to submit themselves meekly to their mothers-in-law.

The mothers-in-law with their traditional domineering attitudes fail to adjust themselves with the educated women of younger generation. As a consequence, conflicts crop up and end in the disintegration of the joint family.

5. Influence of western culture:

Western culture has fostered in young men and women individualistic tendencies with the result that they do not want their fortunes to be tied down forever with those of the joint family. B.B. Saha rightly observes that individualism as a gift of western culture has given rise to a separatist tendency among them. Furthermore, influenced by the western values such as rationalism, equality, freedom etc, they do not like to remain submissive under the tight grip of the joint family. The end result is the disintegration of the joint family system.

6. Over-Population:

In rural India, agriculture is the major occupation of the ruralites. Land being fixed, agriculture fails to provide employment to the ever-increasing number of people depending upon it. Rapid growth of population leads to an imbalance of man and land equation. People are forced to go to towns and cities in search of employment. This has resulted in the disintegration of joint family.

7. Developed means of transport and communication:

In the past, there was hardly any appreciable development in the field of transport and communication. Hence the level of mobility was low. But today as a result of developed means of transport and communication, there is large-scale mobility. People move to different places in order to avail better employment opportunities. This leads to the breaking up of joint families.

8. Change in marriage system:

Change in marriage system has its adverse impact on the continuance of the joint family system. Factors like solemnization of marriage at the late age, restricted role of the head of the family in mate selection, freedom enjoyed by young men and women in matrimonial affairs, perception of marriage by most of the people as a social ceremony rather than a religious sacrament etc. have weakened joint family ties.

9. Problem of accommodation:

The problem of accommodation has a lion's share in the disintegration of the joint family system. This problem is more pronounced in big cities and metropolis. Members of a joint family find it extremely difficult to live together despite their desire and willingness to do so. Needless to state that the problem of accommodation leads to loss of privacy and lack of adjustment and understanding among the people, thereby making the healthy functioning of the joint family impossible.

10. Social legislation:

Legislation has had a devastating effect on the institution of joint family in India. The Hindu Women's Right to Property Act of 1937, which recognised the wife as the surviving personality of the dead coparcener with all his rights in the property, has obviated the theory of survivorship as a guiding principle of joint family property.

The Hindu Marriage Act, 1955 enabled women to seek divorce under specific circumstances. Similarly, the Hindu Succession Act of 1956 has brought about substantial changes in the Hindu joint family structure by conferring equal rights on women in inheritance and also by totally obviating the theory of survivorship. The recent legislation pertaining to ceilings on land has done incalculable damage to the joint family system in India.

Further, with the enactment of legislation providing social security to people in times of crises such as sickness, old age, delivery, death etc. the importance of joint family as a veritable agency of social insurance has been relegated to the background. The government and the industrial management have been seized with the responsibility of providing social security to the individuals.

In essence, the joint family system which served the economic and psychological needs of the feudal agricultural communities has become increasingly cumbersome and restrictive after several generations of industrial modernisation. But it is unlikely to disappear completely until the three generations involved in any given family unit have equally undergone full psychological adjustment to the nuclear system.

While scope for individual initiative and mobility undoubtedly exists now in India, there is no precedent for the overall change in depth which it is faced, save in China. The present situation in the Indian context may be summed up as follows. The joint family is dead.

INHERITANCE AND SUCCESSION FOR WOMEN UNDER HINDU LAW

Under the Hindu Succession Act, 1956,^[1] females are granted ownership of all property acquired either before or after the signing of the Act, abolishing their "limited owner" status. However, it was not until the 2005 Amendment that daughters were allowed equal receipt of property as with sons. This invariably grants females property rights.

The property of a Hindu female dying intestate, or without a will, shall devolve in the following order:

1. upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband,
2. upon the heirs of the husband.
3. upon the father and mother
4. upon the heirs of the father, and
5. upon the heirs of the mother.

Certain exceptions

Any person who commits murder is disqualified from receiving any form of inheritance from the victim. If a relative converts from Hinduism, he or she is still eligible for inheritance. The descendants of that converted relative, however, are disqualified from receiving inheritance from their Hindu relatives, unless they have converted back to Hinduism before the death of the relative.

Amendments

The Hindu Succession (Amendment) Act, 2005,^[2] amended Section 4, Section 6, Section 23, Section 24 and Section 30 of the Hindu Succession Act, 1956. It revised rules on coparcenary property, giving daughters of the deceased equal rights with sons, and subjecting them to the same liabilities and disabilities. The amendment essentially furthers equal rights between males and females in the legal system.

HINDU WOMEN'S RIGHT TO PROPERTY ACT, 1937

This act was brought in the light of hue and cry from the people for the unjust position of women with regard to property rights. The act took a step forward in covering gender gap by providing a widow with the right to inherit the same share as to the son. This right was extended to the widow of a predeceased son of a predeceased son. It also had a provision that when a widow is governed by any law except Dayabhaga, she would have the same interest in the property as the owner had. But the act could not bridge the gender gap entirely because it mentioned that on acquiring the property on such situations, Hindu women's interest would be limited known as 'Hindu women's estate', however she would have the same right of claiming partition as a male owner.

STATUS OF WIFE UNDER PREVIOUS LAW AND CURRENT POSITION

In earlier times, a woman could assert her rights only upon her Streedhan. This included both movable and immovable property which a woman used to get during her marriage. According to Narada, wife had the right to enjoy the property which was gifted to her by her husband but she had no right to alienate any such immovable property after his death. Such property was also included in Streedhan.

With the passage of time, the concept of *Streedhan* got two wings. The first being *Sauadayika* which was acquired by her as gifts from both the sides as well as by self skills during maidenhood or widowhood. She had the right to alienate these properties. The second being *Non Saudayika*, which was acquired by her as gifts from strangers and property acquired by her own skill as a married woman. She did not have the right to alienate them without her husband's consent. The Privy Council coined the word 'Women's estate'[x] in place of *Streedhan*. The difference was that it could not be alienated and on death it has to be devolved on the heirs of the last full owner.

The present act of succession for Hindus does not give many rights to the wife on coparcenary property. She can only get right of inheritance along with her sons and daughters in case of demise of her husband. This right extinguishes in case she is a divorcee. But in Rudr Narain Singh v Rup Kuar], it was held that "Immovable property given to a wife by a husband would appear to be held on terms similar to those on

which property inherited from her husband is held, and her acts in respect of it are liable to question in a similar manner by the next heirs." Under the current law, the wife cannot be a coparcener since she holds her coparcenary rights in her maternal home.

STATUS OF WIDOWS AND THE CURRENT LAW

Under classical law, on husband's death, the widow was supposed to become *Sati* on the funeral pyre of her husband. This was prevalent mostly in parts of eastern India where the Dayabhaga law was in force which addressed the rights of women. In these parts *Sati* indeed was practised profusely so that the property could be saved from the hands of the woman. Not only this, but Manu said that "If the future husband of a maiden dies after truth verbally plighted, her brother in law shall wed her according to the following rule". The child begotten from such marriage would be regarded as the son of the deceased person. The Hindu women's right to property act, 1937 tried to put the widow in place of the husband after her death in *Mitakshara* law. Widow would succeed in preference to daughters but to limited estate. Similarly, on the death of the widow, the daughters could succeed as limited owners. Even after acquiring such a vested interest in the property the widow would continue to be a part of the joint family. In *State of Maharashtra v Narayan Rao*, it was held that the widow would get the share in the property at the time when her husband dies but she cannot be exempted from the family without her assent as it would lead to unintended consequences by the legislature. Although, she did not become the coparcener which would mean that she would get the same interest but not the same right as that of her husband.

Under the old Hindu Law only the "*Streedhan*" was the widow's absolute property and she was entitled to the other inherited properties only as a life-estate with very limited powers of alienation, if at all. Even under the 1937 Act, the concept of "limited estate" continued. Section 14 of the Hindu Succession Act removed the disability of a female to acquire and hold property as an absolute owner, and converted the right of a woman in any estate already held by her on the date of the commencement of the Act as a limited owner, into an absolute owner.

The provision is retrospective in that it enlarged the limited estate into an absolute one even if the property was inherited or held by the woman as a limited owner before the Act came into force. The only exception, in the form of a proviso, is for the acquisitions under the terms of a gift, will or other instrument or a decree, or order or award which prescribe a restricted estate. This would be so only if the woman has title as well as de jure possession of the property at the time of commencement of the act. The case of *Amar Kaur v Raman Kumari* best explains the right of women in ancestral property.

Under sec 3(1) of the Act, the widow under *Mitakshara* law would inherit along with the male issue. In *Dayabhaga*, she inherits equally with the male issue. Moreover, it covered intestate's widow, widow of intestate's son and widow of predeceased son of predeceased son. This act however deprived the widow of any agricultural land leaving her at a losing end. But an important step that was taken was the right to claim partition.[xxiv] Although the nature of the property held by her would be "limited estate" which she can alienate on legal necessity and only enjoy the property during lifetime.[xxv]

After the introduction of the Hindu Succession Act, 1956, this "*limited estate*" of the widow was converted into absolute estate. But in *Commissioner of Income Tax v. Seth Govindam Sugar Mills*, it was held that a widow of a Karta cannot be the Karta after his death. In order to extend the rights of the widows, the concept of notional partition was elaborated in *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum*[xxvii] that gave the widows a right to claim partition.

CHANGE IN THE STATUS OF DAUGHTERS WITH THE INTRODUCTION OF THE NEW ACT

A consistent concern has been that under *Mitakshara* law, a son would inherit his deceased father's property and would also have a share in the joint family property whereas the daughter would only get a share out of the notional partition of the deceased person. No right would be accrued to her by the virtue of birth.

Since the passing of the Act of 1956, right of a daughter and a married daughter was consistently agitated upon. Some states like Kerala, Karnataka and Andhra took steps to amend the acts to liberalize the law. As a result, the Hindu Succession Act, 2005 came in to introduce substitution in Section 6 of the Act to bring in equality in law for both the sexes. In *B. Chandrasekhar Reddy v State of Andhra Pradesh*, it was held that denying women right to coparcenary from birth would be denying them their right to equality with other coparceners. Under the 1956 Act, under the proviso of Section 6, the representation for heirs go up to two degrees in the male line of descent but in female line of descent it went only upto one degree.[xxxii] Apart from that, Section 23 of the 1956 Act mentioned that women were not dispensed with the right to residence in paternal home unless she was divorced or widowed. Moreover, she was not entitled to seek partition of the property unless the male members took a stand.

The 2005 Amendment brought in a change that made the daughters capable of getting a birth right in the ancestral property. If she dies intestate, then her property would devolve in accordance with section 15 of the Act.[xxxiv] But this provision would not apply retrospectively. It also addressed the other glitches mentioned in the previous act. The amending act also added new heirs.

Section 29 A of the Andhra Act gives the daughter the right to be the coparcener by birth. But the contention that raised here was that whether daughters who are adopted would also be given the same rights as the daughter who gets it by virtue of birth. But it was argued that the provision was introduced so as to bring in daughters at par with the sons and the discrimination between an adopted daughter and a daughter who is born in the family won't serve the purpose of the change. Moreover marital status of a woman cannot define her coparcener rights in the father's property.

The Hindu Succession Act, 1956, is a law that was passed by the 'Parliament of India'. The preamble of the Act signifies that an Act to amend and codify the law relating to intestate succession among Hindus. The Act lays down a uniform and comprehensive system of succession whereas attempt has been made to ensure equality inheritance rights between sons and daughters. It applies to all Hindus including Buddhists Jains and Sikhs. The Hindu Succession Act, 1956 preserves the dual mode of devolution of property under the Mitakshara School. The joint family still devolves by Survivorship with this important exception that if a Mitakshara Coparcener dies leaving behind mother, widow, daughter, daughter's daughter, son's daughter, son's son's daughter, son's widow, son's son's widow, or daughter's son his interest in the joint family property will devolve by succession.

Succession to the property of a Hindu Male

The Hindu Succession Act, 1956 deals with the inheritance to

- a) The separate properties of a Mitakshara male,
- b) The separate and coparceners properties of a Dayabhaga male, and
- c) The undivided interest in the joint family property of a Mitakshara Coparcener.

The Act does not apply to the property of a Hindu who is married under the Special Marriage Act to a non - Hindu.

Heirs of a Hindu Male

The heirs of Hindu male fall under the following categories:-

- 1) Class I heirs,
- 2) Class II heirs,
- 3) Agnates,
- 4) Cognates, and
- 5) Government.

Class I heirs:-

The property of a Hindu Male dying intestate would be given first to heirs within Class I. They are:

- i. Mother,
- ii. Widow,
- iii. Daughter,
- iv. Son,
- v. Widow of a predeceased son,
- vi. Son of a predeceased son,
- vii. Daughter of a predeceased son,
- viii. Widow of a predeceased son of a predeceased son,
- ix. Daughter of a predeceased son of a predeceased son,
- x. Son of a predeceased son of a predeceased son,
- xi. Daughter of a predeceased daughter, and
- xii. Son of a predeceased daughter.

Some new heirs are added by Hindu Succession (Amendment) Act, 2005. They are:

- i. Son of a predeceased daughter of a predeceased daughter,
- ii. Daughter of a predeceased daughter of a predeceased daughter,
- iii. Daughter of a predeceased son of a predeceased daughter, and
- iv. Daughter of a predeceased daughter of a predeceased son.

Shares of Class I heirs :

Section 10, Hindu Succession Act deals with the distribution of the property of the propositus, among class I heirs. The rules are:

A.] Sons, daughters and the mother of the propositus each take one share.

For example:-

If 'P' dies leaving behind his Mother 'M', two sons S1 and S2 and two Daughters D1 and D2, each of the above heirs will take one share, i.e., 1/5th

- 'M' will take 1/5th ;
- D1 and D2 each will also take 1/5th &
- S1 and S2 each will take one fifth.

B.] Widow takes 1 share. If there are more than one widow, all of them together take one Share and among themselves they divide it equally.

For example:-

'P' dies leaving behind a widow, 'W' and three daughters 'D', 'D1', and 'D2'. Here each will take one share, i.e. 1/4th to each.

- 'W' will take 1/4th,
- 'D', 'D1' & 'D2' each will take 1/4th .

C.] Among the heirs of the branches of a predeceased son, son of a predeceased son of a Predeceased son and predeceased daughter, so here the doctrine of representation applies i.e. heirs in each branch would take the same share which their parent would have taken.

So, we see above three rules in the following example:

If 'P' dies leaving behind son 'S', widow of a predeceased son 'S1', 'SW', Predeceased daughter's son and daughter 'DS' and 'DD', predeceased son's Predeceased son's widow 'SSW', his daughter 'SSD' and his son 'SSS'.

Distribution is first to be made at a place where branches come into existence.

There are four branches, each will take 1/4th share i.e.

- 'S' will take 1/4th .In the branch of 'S1' there is only one heir 'SW', she

representing 'S1' will take 1/4th .

- In the branch of predeceased daughter, there are two heirs, they representing her will take 1/4th and between themselves divide it equally, with result that 'DS' will take 1/8th and 'DD' will take 1/8th .

- In the branch of predeceased grandson, there are three heirs, representing him they will take 1/4th & among themselves share it equally, with the result that 'SSW', 'SSD' & 'SSS' each will take 1/12th.

Class II heirs and their shares:

If there are no heirs in Class I, the property will given to the heirs within Class II. They are divided into nine categories. The rule is that an heir in an earlier category excludes heirs in later category. Further all heirs in one category take simultaneously per capita share. They are as follows:

1] Category I -

a) Father.

2] Category II -

a) Son's daughter's son.

b) Son's daughter's daughter.

c) Brother.

d) Sister.

3] Category III -

a) Daughter's son's son.

b) Daughter's son's daughter.

c) Daughter's daughter's son.

d) Daughter's daughter's daughter.

4] Category IV -

a) Brother's son.

b) Brother's daughter.

c) Sister's son.

d) Sister's daughter.

5] Category V -

a) Father's father.

b) Father's mother.

6] Category VI -

a) Father's widow. [Step mother].

b) Brother's widow.

7] Category VII -

a) Father's brother.

b) Father's sister.

8] Category VIII -

a) Mother's father.

b) Mother's mother.

- 9] Category IX –
a) Mother's brother.
b) Mother's sister.

The rule of share in Class-II heirs is that each will take per capita including widow.

Agnates and Cognates:

Next heir of Hindu male is 'Agnates and Cognates'. In it first preference is given to 'Agnates' & then 'Cognates'. The rules for determining who are agnates & cognates are the same; so are the rules relating to distribution of property among them.

Agnates mean when a person traces his relationship with another through males, he or she is an 'Agnates'. For instance brother, brother's son, son's son, son's son father, father's father, father's mother, father's father's father & mother, son's daughter, son's son's daughter..... etc are agnates.

On other hand cognates means whenever in the relationship of a person with another, a female (or more than one female) interferences anywhere in the line, one cognate to another. For instance sister's sons & daughters; daughter's sons & daughters; mother's mother & father; father's mother's father & mother; mother's father's son & daughter.....etc are all cognates.

Government:

If a Hindu male leaves behind neither class I, nor class II, nor any agnates, nor any cognates upon his death, then, his entire property lapses to the government. This is called as "Escheat". When government takes his property as heir, it takes with subject to all the obligations and liabilities of propositus.

Succession to a Mitakshara Coparcener's Interest

The Section 6 of the Act has been extensively amended by the Hindu Succession (Amendment) Act, 2005; while recognizing the rule of devolution by Survivorship among the members of the coparcener makes an exception to the rule in the proviso.

According to proviso, if the deceased has left a surviving female relative specified in class I or a male relative specified in that class who claim through such female relation, the interest of a deceased in Mitakshara Coparceners property shall devolve by testamentary of instate succession under the Act and not as Survivorship.

Certain exceptions:-

If, and the heirs are both male and female, the female heir is not allowed to request partition until the male heir chooses to divide their respective shares. If this female heir is a daughter, she has the right to reside in the home if she is unmarried, divorced or widowed.

After the Hindu Succession (Amendment) Act, 2005; Section 6, the difference between the female and male inheritor has been abolished. Now even female inheritor [daughter] can also claim partition of the ancestral property.

Further any person who commits murder is disqualified from receiving any form of inheritance from the victim.

If a relative converts from Hinduism, he or she is still eligible for inheritance.

Amendments

The Hindu Succession (Amendment) Act, 2005, amended Section 6 of the Hindu Succession Act, 1956,

allowing daughters of the deceased equal rights with sons. In the case of coparcenary property, or a case in which two people inherit property equally between them, the daughter and son are subject to the same liabilities and disabilities. The amendment essentially furthers equal rights between males and females in the legal system.

• **2. Inheritance right of women under Christian law.**

Every law of succession defines the rules of distribution of property in case a person dies without making a will. The Christian Law of Succession is governed by the provisions in the Indian Succession Act, 1925. However, with respect to Indian Christians, the diversity in inheritance laws is greatly intensified by making domicile a criterion for determining the application of laws. Till January 1986, Christians in the State of Kerala were governed by two different Acts - those domiciled in Cochin were subject to the application of the Cochin Christian Succession Act, 1921, while the Travancore Christians were governed by the Travancore Christian Succession Act, 1916. These two Acts have now been repealed and the Christians following these laws earlier are now governed by the general scheme of inheritance under the Indian Succession Act, 1925. However, Protestant and Tamil Christians, for example, living in certain taluks, are still governed by their respective customary laws. Christians in the State of Goa and the Union Territories of Daman and Diu are governed by the Portuguese Civil Code, 1867, while those in Pondicherry could be governed by the French Civil Code, 1804 (such Christians are known as “Renocants”), customary Hindu law, or the Indian Succession Act.

Despite these variances, the overall law for Indian Christians in effect is the Indian Succession Act of 1925, which will be dealt with in this project. It has been deemed “somewhat archaic and anachronistic” by certain legal experts, but it continues to be the only firm law in this regard. This Act recognises three types of heirs for Christians: the spouse, the lineal descendants, and the kindred.

Laws of succession applicable to Christians and Jews; for the intestate the governing law is the Indian Succession Act, 1925 specifically under section 31 to 49 of the Act.

THE INDIAN SUCCESSION ACT, 1925

31. Chapter not to apply to Parsis.—Nothing in this Chapter shall apply to Parsis.

THE INDIAN SUCCESSION ACT, 1925

32. Devolution of such property.—The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter. 1[***]

THE INDIAN SUCCESSION ACT, 1925

33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.—Where the intestate has left a widow—

(a) if he has also left any lineal descendants, one-thirds of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;

(b) 1[save as provided by section 33A], if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;

(c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.

THE INDIAN SUCCESSION ACT, 1925

[33A. Special provision where intestate has left widow and no lineal descendants.—

(1) Where the intestate has left a widow but no lineal descendants and the net value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow.

(2) Where the net value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per annum until payment.

(3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property.

(4) The net value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject.

(5) This section shall not apply—

(a) to the property of—

(i) any Indian Christian,

(ii) any child or grandchild of any male person who is or was at the time of his death an Indian Christian, or

(iii) any person professing the Hindu, Buddhist, Sikh or Jaina religion the succession to whose property is, under section 24 of the Special Marriage Act, 1872 (3 of 1872) regulated by the provisions of this Act;

(b) unless the deceased dies intestate in respect of all his property.]

THE INDIAN SUCCESSION ACT, 1925

34. Where intestate has left no widow, and where he has left no kindred.—Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained; and, if he has left none who are of kindred to him, it shall go to the Government.

THE INDIAN SUCCESSION ACT, 1925

35. Rights of widower.—A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.

THE INDIAN SUCCESSION ACT, 1925

36. Rules of distribution.—The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in sections 37 to 40.

THE INDIAN SUCCESSION ACT, 1925

37. Where intestate has left child or children only.—Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.

THE INDIAN SUCCESSION ACT, 1925

38. Where intestate has left no child, but grand-child or grand-children.—Where the intestate has not left surviving him any child but has left a grand-child or grand-children and no more remote descendant through a deceased grand-child, the property shall belong to his surviving grand-child if there is one, or shall be equally divided among all his surviving grand-children. Illustrations

(i) A has three children, and no more, John, Mary and Henry. They all die before the father, John leaving two children, Mary three and Henry four. Afterwards A dies intestate, leaving those nine grand-children and no descendant of any deceased grand-child. Each of his grand-children will have one-ninth.

(ii) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grand-children, the children of John and Mary.

THE INDIAN SUCCESSION ACT, 1925

39. Where intestate has left only great-grand-children or remoter lineal descendants.—In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

THE INDIAN SUCCESSION ACT, 1925

40. Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.—

(1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

(2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate. Illustrations

(i) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(ii) A left no child, but left eight grand-children, and two children of a deceased grand-child. The property is divided into nine parts, one of which is allotted to each grand-child, and the remaining one-ninth is equally divided between the two great-grand-children.

(iii) A has three children, John, Mary and Henry; John dies leaving four children; and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry, one-third to Mary's child and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grand-children.

(iv) A has two children, and no more, John and Mary. John dies before his father, leaving his wife pregnant. Then A dies leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and the posthumous child.

THE INDIAN SUCCESSION ACT, 1925

41. Rules of distribution where intestate has left no lineal descendants.—Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in sections 42 to 48.

THE INDIAN SUCCESSION ACT, 1925

42. Where intestate's father living.—If the intestate's father is living, he shall succeed to the property.

THE INDIAN SUCCESSION ACT, 1925

42. Where intestate's father living.—If the intestate's father is living, he shall succeed to the property.

THE INDIAN SUCCESSION ACT, 1925

43. Where intestate's father dead, but his mother, brothers and sisters living.—If the intestate's father is dead, but the intestate's mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares. Illustration A dies intestate, survived by his mother and two brothers of the full blood, John and Henry and a sister Mary, who is the daughter of his mother but not of his father. The mother takes one-fourth, each brother takes one-fourth and Mary, the sister of half blood, takes one-fourth.

THE INDIAN SUCCESSION ACT, 1925

43. Where intestate's father dead, but his mother, brothers and sisters living.—If the intestate's father is dead, but the intestate's mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares. Illustration A dies intestate, survived by his mother and two brothers of the full blood, John and Henry and a sister Mary, who is the daughter of his mother but not of

his father. The mother takes one-fourth, each brother takes one-fourth and Mary, the sister of half blood, takes one-fourth.

THE INDIAN SUCCESSION ACT, 1925

44. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.—If the intestate's father is dead but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death. Illustration A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister, Mary, and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each takes one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

THE INDIAN SUCCESSION ACT, 1925

44. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.—If the intestate's father is dead but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death. Illustration A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister, Mary, and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each takes one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

THE INDIAN SUCCESSION ACT, 1925

45. Where intestate's father dead and his mother and children of any deceased brother or sister living.—If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sisters shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death. Illustration A, the intestate, leaves no brother or sister but leaves his mother and one child of a deceased sister, Mary and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

THE INDIAN SUCCESSION ACT, 1925

45. Where intestate's father dead and his mother and children of any deceased brother or sister living.—If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sisters shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death. Illustration A, the intestate, leaves no brother or sister but leaves his mother and one child of a deceased sister, Mary and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

THE INDIAN SUCCESSION ACT, 1925

46. Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.—If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

THE INDIAN SUCCESSION ACT, 1925

46. Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.—If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

THE INDIAN SUCCESSION ACT, 1925

47. Where intestate has left neither lineal descendant, nor father, nor mother.—Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

THE INDIAN SUCCESSION ACT, 1925

48. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.—Where the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him. Illustrations (i) A, the intestate, has left a grandfather, and a grandmother and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(ii) A, the intestate, has left a great-grandfather, or a great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree will take equal shares.

(iii) A, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree will take equal shares.

(iv) Ten children of one brother or sister of the intestate and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They will each take one-eleventh of the property.

THE INDIAN SUCCESSION ACT, 1925

49. Children's advancements not brought into hotchpot.—Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

Basic Principles of The Christian Law Of Succession

The Concept of Succession

Before venturing into a discussion on the Christian Law of Succession, we would do well to first make a preliminary study of what exactly succession is. Succession, in brief, deals with how the property of a deceased person devolves on his heirs. This property may be ancestral or self-acquired, and may devolve in two ways:

1. By Testamentary Succession, i.e. when the deceased has left a will bequeathing his property to specific heirs
2. By Intestate Succession, i.e. when the deceased has not left a will, whereby the law governing the deceased (according to his religion) steps in, and determines how his estate will devolve.

The Indian Succession Act, 1925

The religion of the deceased determines the succession to his estate. For example, succession among Hindus is governed by the Hindu Succession Act, 1956. As such, Christians in general are governed by the Indian Succession Act of 1925 for succession purposes.

S. 2(d) of the Act defines an “Indian Christian” hereby: “Indian Christian” means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion. This was further clarified in the case of *Abraham v. Abraham* where the scope of this definition of an ‘Indian Christian’ was delineated with regard to its actual working. This case laid down that a Hindu who has converted to Christianity shall not be governed by Hindu law (customary or otherwise) anymore, and any continuing obligatory force that the Hindu law may have exercised upon him stands renounced. However, he was clearly given the option to permit the old law to continue to have an effect on him, despite having converted out of the old religion into the new one.

In 1865, the original Indian Succession Act was passed and a new question arose as to whether, even under the provisions of this new Act, the convert could elect to be governed by the old law. In the case of *Kamawati v. Digbijoy* thereafter it was held by the Privy Council that the old law ceases to be applicable with regard to inheritance i.e. succession. Thereafter in a recent 2001 judgement, the Allahabad High Court reiterated that Hindu converts to Christianity will be bound solely by the succession laws governing Christians, inclusive of the Indian Succession Act, 1925, and it will not be possible for them to elect to be governed by the old law in this or related matters.

Will, however, the incidents of the joint family (in the case of those converting out of the Hindu religion) continue to apply? The Courts in this regard have not been able to reach a uniform conclusion. In the case of *Francis v. Gabri* the Bombay High Court held that if a family were to convert out of Hinduism into Christianity, the coparcenary rights of that family would remain untouched. But the Madras High Court held in the case of *Francis v. Tellis* that the effect of conversion out of Hinduism would be to render all coparcenary rights thenceforth individual rights. In this case, out of two brothers, one of them converted to Christianity. It was held that upon his death it would not be possible for the other brother to succeed to the entire estate by way of the doctrine of survivorship.

Intestate Succession Among Indian Christians

S. 30 of the Indian Succession Act, 1925 defines intestate succession thus: A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect. Thus any property which has not already been bequeathed or allocated as per legal process, will, upon the death of the owner, insofar as he is an Indian Christian, devolve as per the rules contained in Chapter II of the Act. It would be worthwhile to note at this point that intestacy is either total or partial. There is a total intestacy where the deceased does not effectively dispose of any beneficial interest in any of his property by will. There is a partial intestacy where the deceased effectively disposes of some, but not all, of the beneficial interest in his property by will.

Domicile

The Domicile of the deceased plays an integral role in determining the method of devolution of his property. Halsbury defined ‘domicile’ thus: “A person's domicile is that country in which he either has or is deemed by law to have his permanent home.” S.5 of the Act categorically states that succession to the movable property of the deceased will be governed by the *lex loci* as per where he had his domicile at the time of his death; whereas succession to his immovable property will be governed by the law of India (*lex loci rei sitae*), no matter where he was domiciled at the time of his death. Also, S. 6 further qualifies this provision by stating that a person can have only one domicile for the purpose of succession to his movable property. It must be noted that domicile and nationality differ from each other - domicile deals with immediate residence, whereas nationality implies the original allegiance borne by the person. S. 15 lays down that upon and during subsistence of marriage, the wife acquires the domicile of her husband automatically.

Kindred Or Consanguinity

S. 24 of the Act makes an initial reference to the concept of kindred and consanguinity, defining it as “the connection or relation of persons descended from the same stock or common ancestor.” S. 25 qualifies ‘lineal consanguinity’ with regard to descent in a direct line. Under this head fall those relations who are descendants from one another or both from the same common ancestor. Now, succession can be either ‘per capita’ (one share to each heir, when they are all of the same degree of relationship) or ‘per stirpes’ (division according to branches when degrees of relationship are discrete). For Christians, if one were to claim through a relative who was of the same degree as the nearest kindred to the deceased, one would be deemed to stand in the shoes of such relative and claim ‘per stirpes.’

S. 26 qualifies ‘collateral consanguinity’ as occurring when persons are descended from the same stock or common ancestor, but not in a direct line (for example, two brothers). It is interesting to note that the law for Christians does not make any distinction between relations through the father or the mother. If the relations from the paternal and maternal sides are equally related to the intestate, they are all entitled to succeed and will take equal share among themselves. Also, no distinction is made between full-blood/half-blood/uterine relations; and a posthumous child is treated as a child who was present when the intestate died, so long as the child has been born alive and was in the womb when the intestate died.

Christian law does not recognise children born out of wedlock; it only deals with legitimate marriages. Furthermore it does not recognise polygamous marriages either. However, a decision has been made to the effect that it does recognise adoption and an adopted child is deemed to have all the rights of a child natural-born, although the law does not expressly say so.

The law of intestate succession under S. 32 states that: The property of an intestate devolves upon the wife or husband or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter. However, as aforementioned, the Act recognises three types of heirs for Christians: the spouse, the lineal descendants, and the kindred. These shall be dealt with now.

Rights Of The Widow And Widower

S. 33, S. 33-A, S. 34 of the Act govern succession to the widow. Together they lay down that if the deceased has left behind both a widow and lineal descendants, she will get one-third share in his estate while the remaining two-thirds will go to the latter. If no lineal descendants have been left but other kindred are alive, one-half of the estate passes to the widow and the rest to the kindred. And if no kindred are left either, the whole of the estate shall belong to his widow. Where, however, the intestate has left a widow but no lineal descendants, and the net value of his property does not exceed five thousand rupees, the whole of the property will go to the widow - but this provision does not apply to Indian Christians.

S. 35 lays down the rights of the widower of the deceased. It says quite simply that he shall have the same rights in respect of her property as she would in the event that he predeceased her (intestate).

Rights Of Children And Other Lineal Descendants

If the widow is still alive, the lineal descendants will take two-thirds of the estate; if not, they will take it in whole. Per capita (equal division of shares) applies if they stand in the same degree of relationship to the deceased. This is as per Sections 36-40 of the Act. Importantly, case law has determined that the heirs to a Christian shall take his property as tenants-in-common and not as joint tenants.

Also, the religion of the heirs will not act as estoppel with regard to succession. Even the Hindu father of a son who had converted to Christianity was held entitled to inherit from him after his death.

As per S. 48, where the intestate has left neither lineal descendant, nor parent, nor sibling, his property shall be divided equally among those of his relatives who are in the nearest degree of kin to him. If there are no heirs whatsoever to the intestate, the doctrine of escheat can be invoked by the Government, whereupon the estate of the deceased will revert to the State.

Testamentary Succession Among Indian Christians

A will is the expression by a person of wishes which he intends to take effect only at his death. In order to make a valid will, a testator must have a testamentary intention i.e. he must intend the wishes to which he gives deliberate expression to take effect only at his death.

Testamentary Succession is dealt with under Part VI of the Indian Succession Act, 1925. According to S. 59, every person of sound mind, not being a minor, may dispose of his property by will. The explanations to this Section further expand the ambit of testamentary disposition of estate by categorically stating that married women as also deaf/dumb/blind persons who are not thereby incapacitated to make a will are all entitled to disposing their property by will. Soundness of mind and freedom from intoxication or any illness that render a person incapable of knowing what he is doing are also laid down as prerequisites to the process.

Part VI of the Act encompasses 134 Sections from S. 57 to S. 191, that comprehensively deal with all issues connected with wills and codicils, and the making and enforcing of the same, including capacity to make a will, formalities needed for wills, bequests which can be validly made etc.

Conclusion And Suggestions

It has been argued by several prominent Christian lawyers and legal writers that "laws with regard to touchy issues like succession, etc. should reflect customs and practices for their acceptance and sustenance." While the improvements introduced by the Indian Succession Act, 1925 with regard to women's property rights have been welcomed, since "the majority of Christians do not seem to be opposed to giving equal share to women in the matter of intestate succession," there is also a faint vein of resentment with regard to the total repeal of the Travancore Christian Succession Act 1792 since it was considered to be an overall well-balanced legislation.

As these problems are still alive, it has become necessary to look for some solutions in the constitutional context. "While in view of [the] distinction between legislative and judicial functions, the legislature cannot by a bare decision, without more, directly overrule, reverse or override a judicial decision, it may at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative, or neutralising effect the conditions on which such decision is based." With this in mind, the Travancore-Cochin Christian Succession (Revival and Validation) Bill, 1996 was put forth. Unfortunately, all it looked to was a rehashing of the earlier law, and not an arrangement for the validation of past transactions, which is in fact more significant.

Indian Christians number more than 2,00,00,000 - two crores - of the population of this country. It is important that their rights and wishes be considered with regard to application of laws to their community.

• **3. Inheritance right of women under Parsi law.**

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.

THE INDIAN SUCCESSION ACT, 1925

- 1[50. General principles relating to intestate succession.—For the purpose of intestate succession among Parsis—
- (a) there is no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive;
- (b) a lineal descendant of an intestate who has died in the lifetime of the intestate without leaving a widow or widower or any lineal descendant or 2[a widow or widower of any lineal descendant] shall not be taken into account in determining the manner in which the property of which the intestate has died intestate shall be divided; and

- (c) where a 3[widow or widower of any relative] of an intestate has married again in the lifetime of the intestate, 4[such widow or widower] shall not be entitled to receive any share of the property of which the intestate has died intestate, and 4[such widow or widower] shall be deemed not to be existing at the intestate's death.

THE INDIAN SUCCESSION ACT, 1925

- 1[51. Division of intestate's property among widow, widower, children and parents.—
- (1) Subject to the provisions of sub-section (2), the property of which a Parsi dies intestate shall be divided,—
- (a) where such Parsi dies leaving a widow or widower and children, among the widow or widower, and children so that the widow or widower and each child receive equal shares;
- (b) where such Parsi dies leaving children, but no widow or widower, among the children in equal shares.
- (2) Where a Parsi dies leaving one or both parents in addition to children or widow or widower and children, the property of which such Parsi dies intestate shall be so divided that the parent or each of the parents shall receive a share equal to half the share of each child.]
- THE INDIAN SUCCESSION ACT, 1925 (SECTION - 51 TO 56)
- SECTION -51. Division of intestate's property among widow, widower, children and parents.—
- (1) Subject to the provisions of sub-section (2), the property of which a Parsi dies intestate shall be divided,—
- (a) where such Parsi dies leaving a widow or widower and children, among the widow or widower, and children so that the widow or widower and each child receive equal shares;
- (b) where such Parsi dies leaving children, but no widow or widower, among the children in equal shares.
- (2) Where a Parsi dies leaving one or both parents in addition to children or widow or widower and children, the property of which such Parsi dies intestate shall be so divided that the parent or each of the parents shall receive a share equal to half the share of each child.]
- THE INDIAN SUCCESSION ACT, 1925
- 52. [Repealed.]¹

THE INDIAN SUCCESSION ACT, 1925

- 53. Division of share of predeceased child of intestate leaving lineal descendants.—In all cases where a Parsi dies leaving any lineal descendant, if any child of such intestate has died in the lifetime of the intestate, the division of the share of the property of which the intestate has died intestate which such child would have taken if living at the intestate's death shall be in accordance with the following rules, namely:—
- (a) If such deceased child was a son, his widow and children shall take shares in accordance with the provisions of this Chapter as if he had died immediately after the intestate's death: Provided that where such deceased son has left a widow or a widower of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made shall be divided in accordance with the provisions of this Chapter as property of which the intestate has died intestate, and in making the division of such residue the said deceased son of the intestate shall not be taken into account.
- (b) If such deceased child was a daughter, her share shall be divided equally among her children.
- (c) If any child of such deceased child has also died during the lifetime of the intestate, the share which he or she would have taken if living at the intestate's death, shall be divided in like manner in accordance with clause (a) or clause (b) as the case may be.
- (d) Where a remoter lineal descendant of the intestate has died during the lifetime of the intestate, the provisions of clause (c) shall apply mutatis mutandis to the division of any share to which he or she would have been entitled if living at the intestate's death by reason of the pre-decease of all the intestate's lineal descendants directly between him or her and the intestate.

THE INDIAN SUCCESSION ACT, 1925

- 1[54. Division of property where intestate leaves no lineal descendant but leaves a widow or widower or a widow or widower of any lineal descendant.—Where a Parsi dies without leaving any lineal descendant but leaving a widow or widower or a widow or widower of a lineal descendant, the property of which the intestate dies intestate shall be divided in accordance with the following rules, namely:—
- (a) if the intestate leaves a widow or widower but no widow or widower of a lineal descendant, the widow or widower shall take half the said property;
- (b) if the intestate leaves a widow or widower and also a widow or widower of any lineal descendant, his widow or her widower shall receive one-third of the said property and the widow or widower of any lineal descendant shall receive another one-third or if there is more than one such widow or widower of lineal descendants, the last mentioned one-third shall be divided equally among them;
- (c) if the intestate leaves no widow or widower, but one widow or widower of a lineal descendant, such widow or widower of the lineal descendant shall receive one-third of the said property or, if the intestate leaves no widow or widower but more than one widow or widower of lineal descendants, two thirds of the said property shall be divided among such widows or widowers of the lineal descendants in equal shares;
- (d) the residue after the division specified in clause (a), or clause (b) or clause (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II; and the next-of-kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares;
- (e) if there are no relatives entitled to the residue under clause (d), the whole of the residue shall be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.]

THE INDIAN SUCCESSION ACT, 1925

- 55. Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow of any lineal descendant.—When a Parsi dies leaving neither lineal descendants nor a widow or widower nor 1[a widow or widower of any lineal descendant], his or her next-of-kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property of which he or she dies intestate. The next-of-kin standing first in Part II of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that 2[each male and female standing in the same degree of propinquity shall receive equal shares].

THE INDIAN SUCCESSION ACT, 1925

- 56. Division of property where there is no relative entitled to succeed under the other provisions of this Chapter.—Where there is no relative entitled to succeed under the other provisions of this Chapter to the property of which a Parsi has died intestate, the said property shall be divided equally among those of the intestate's relatives who are in the nearest degree of kindred to him.]

4. Inheritance right of women under Muslim law.

Laws of succession governing Muslims; for non-testamentary succession the The Muslim Personal Law (Shariat) Application Act, 1937 is applicable and where a muslim has died testate, the issue has to be governed under the Indian Succession Act, 1925 where a Will relates to immovable property situate within the State of West Bengal, and that of Madras and Mumbai Jurisdiction.

Women and inheritance

In Islam, women are entitled the right of inheritance. In general circumstances, though not all, Islam allots women half the share of inheritance available to men who have the same degree of relation to the decedent. For example, where the decedent has both male and female children, a son's share is double that of a daughter's. Additionally, the sister of a childless man inherits half of his property upon his death, while a brother of a childless woman inherits all of her property. However, this principle is not universally applicable, and there are other circumstances where women might receive equal shares to men. For example, the share of the mother and father of a childless decedent.. Also the share of a uterine brother is equal to the share of a uterine sister, as do the shares of their descendants.

There are some who say women are entitled to equal inheritance in Islam.

Some times women get double the share then that of men, for example if there are only parents and husband, husband will receive half, father gets 1/6 and mother gets 2/6. This is according to Ibne Abbas's interpretation of verses 11, 12 of sorat an nisa. Also the Qur'an does not discriminate between men and women in cases of *kalalah* relation *Kalalah* describes a person who leaves behind neither parents nor children; it also means all the relatives of a deceased except his parents and children, and it also denotes the relationships which are not through [the deceased's] parents or children. Islamic scholars hold that the original reason for these difference is the responsibilities allotted to spouses. A husband in Islam must use his inheritance to support his family while a wife has no support obligations. Additionally, Arab society traditionally practiced the custom of bride price or dowry rather than dowry; i.e., the man paid a gift to his wife or her family upon marriage, rather than the opposite, placing a financial burden on men where none existed on women. This custom was continued but changed materially by Islam. The divine injunction stipulated that the dowry (*mahr*) is due to the wife only not her family. It can also be deferred thereby reducing the burden if the husband is unable to afford the requested dowry at the time of the marriage. The wife can defer it till a stipulated date or it can become a debt on the estate when the husband dies. And give their dowries willingly to women (as an obligation), but if they, of their own accord, remit a portion of the dowry, you may enjoy it with pleasure.

Intestate succession - In absence of a will

The Muslim law of succession has been derived from the rules found in the Quran. There belonged to property of deceased, four successive duties to be performed by the Qazi:

- His funeral ceremony and burial without superfluity of expense yet without deficiency.
- The discharge of his just debts from the whole of his remaining effects
- The payment of his legacies out of a third of what remains after his debts are paid.
- The distribution of the residue amongst his successors

As regards the administration of the estate of a deceased person, the Muslim Law has been superseded in India by the Indian Succession Act, 1925, and such administration is carried out by the executors or administrators under the provisions of the Act.

It is to noted that the provisions of the Indian Succession Act prevail so far the claim to the property is concerned even if they come in conflict with the Mohammedan Law.

• 5. Movement towards uniform Civil Code.

Uniform Civil Code - the women's movement perspective

The BJP has once again raised the issue of a Uniform Civil Code (UCC) for all Indian citizens, posed in a way that presents the BJP as 'secular' and pro-women, and opponents as communal or 'pseudo-secular' and anti-women. Since Independence, there has been very little change in the contours of the debate in the public domain, both within the BJP as well as among public intellectuals not necessarily aligned with the Hindu Right. The only change that has come about since the 1990s is that the UCC is now also posed as a 'women's rights' issue and not only as a matter of national integrity, which requires the eradication of multiple legal systems. This new equation of 'women's rights' with the UCC is at least partly a result of the

interventions by the women's movement in the debate in the 1990s. However, within BJP (and mainstream) discourse, it is assumed that only minority women need saving, for 'we Hindus' have already given 'our' women equal rights.

The women's movement has developed this debate in complex and multiple directions over the decades, which this essay will briefly outline.

The debate over the UCC in contemporary India is produced by the tension between two notions of rights in the Fundamental Rights (Part III) of the constitution. The bearer of rights is both the individual citizen and the collectivity – the former is the subject of Articles 14 to 24 which ensure the individual's rights to equality and freedom and the latter of Articles 25 to 30 which protect religious freedom and the educational and cultural rights of minorities [1]. It is from the latter that religious communities derive the right to be governed by their own 'Personal Laws'. Since these Personal Laws cover matters of marriage, property inheritance and guardianship of children, and since all Personal Laws discriminate against women, the tension in Part III of the constitution can be read as a contradiction between the rights of women as individual citizens and those of religious communities as collective units of a democracy.

However, the implication that uniform laws for all citizens is the properly modern goal for a nation-state, is reflected in the Directive Principles of State Policy (Part IV of the Constitution), which calls upon the state to bring about a UCC.

While the demand for a UCC is claimed on grounds of national integrity and women's rights, resistance to the UCC from self-styled community leaders comes on the grounds that its imposition would destroy the cultural identities of minorities, the protection of which is crucial to democracy. However, both positions are deeply problematic for feminists.

Was the Hindu law really 'reformed'?

The argument that presents national integrity as the rationale for a UCC, and its conflation with 'women's rights', is unacceptable for two reasons.

First, the fundamental problem with the 'national integrity' argument emerges from the recognition of the homogenizing thrust of the Hindu Code. The entity of the 'nation' was constructed through the assertion of a dominant voice and the marginalization and exclusion of a multiplicity of other interests and identities, and is not a value that feminists can espouse.

Second, we need to address the explicit assumption that while Hindus have willingly accepted reform, the 'other' communities continue to cling to diverse and retrogressive anti-women laws, threatening the integrity of the nation state.

It is misleading to claim that Hindu Personal Law was reformed. It was merely codified, and even that was in the face of stiff resistance from Congress leaders. In fact, the proposed Bill meant to overhaul laws relating to marriage and inheritance was dropped on the eve of the first general elections – (Ambedkar famously resigned as Law Minister on this issue) – and it was only in 1955-56 that parts of it were pushed through by Nehru as the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act and the Hindu Adoption and Maintenance Act.

What the Hindu Code achieved was the codification of the vast and heterogeneous practices of communities termed 'Hindu' if they were not Muslim/Parsi/Christian, bringing them into conformity with what was assumed to be the 'Indian' and 'Hindu' norm – that is, North Indian, upper-caste practices. Other practices that did not match this norm were explicitly dismissed during the debates in Parliament as being un-Indian. These new Acts were by no means an unqualified advance for women's rights. On the contrary, codification put an end to the diversity of Hindu laws practiced in different regions, in the process destroying existing, more liberal customary provisions in many cases.

Conversely, there are features of Muslim Personal Law that are better for women than Hindu Personal Law – the Muslim marriage as contract protects women better in case of divorce than the Hindu marriage as sacrament; the Muslim law of inheritance protects women's rights better than Hindu law, and the right of *mehr*, which gives Muslim marriage the status of a civil contract, is the exclusive property of the wife.

Thus, the anodyne statement sometimes offered by BJP leaders that a UCC will take into account ‘positive features’ of all Personal Laws is untenable in practice, because for instance, *mehr* cannot be introduced into Hindu marriages, nor the Hindu sacramental marriage made into a contract, though both of these are positive aspects of Muslim law vis-à-vis Hindu law.

The myth of the polygamous Muslim man

As for that straw man, Muslim polygamy, the fact is that Muslim men who marry more than once are legally bound to fulfill responsibilities towards all the women concerned, while Hindu men who contract bigamous relationships (an extremely common phenomenon), escape this responsibility in their ‘non-legal’ second or third marriages.

In 1974, a government survey found that 5.6% of Muslim men were in bigamous or polygamous relationships, as were 5.8% of upper-caste Hindus. In terms of numbers, this makes a huge difference. Flavia Agnes points out:

Statistics continue to indicate that bigamy among Hindu men (which includes, Buddhists, Jains, Sikhs and other denominations) is, in fact, higher than it is among Muslims. In 1974, a government survey found Muslims to account for 5.6 per cent of all bigamous marriages, with upper-caste Hindus accounting for 5.8 per cent. The difference may appear to be small but in real terms it is big. The 1971 census records 45.3 crore Hindus and six crore Muslims. Allowing for women and children to make up 65 per cent of each group, as many as one crore Hindu men had more than one wife in 1971, compared to 12 lakh Muslim men.

Sociologist Nirmal Sharma points out that while a Hindu man will desert his lawfully wedded wife to live with another, the multiple wives of Muslim men are entitled to equal legal and social rights. “Closet bigamy in Hindus **is worse than open polygamy among Muslims,**” he says.

This is why feminist lawyer Flavia Agnes urges that attempts to codify the Muslim law to bring in legal monogamy ‘should not end up in subjecting Muslim women to a plight which is similar to that of the Hindu second wife. This is an important concern which needs to be taken on board while suggesting **reforms within personal laws.**’

Why community rights are equally unacceptable

On the other hand, feminists cannot accept the unqualified rights of communities to their cultural identity, although the providing of space for such identity is crucial for a democratic polity. For one thing, the ‘community’ identity that is claimed today as natural and prior to all other identity is no more primordial than the nation is. The colonial government in consultation with self-styled community leaders, organized vastly heterogeneous family and property arrangements within the ambit of four religious Personal Laws, Hindu, Muslim, Christian and Parsi. These Personal Laws today being defended by self-styled community leaders in the name of tradition and religious freedom, are thus, colonial constructions of the 19th and 20th centuries.

Feminists also reject community rights over ‘their’ women because the gender discriminatory provisions of the Personal Laws are based on the same logic of exclusions that characterise the coming into being of the nation.

The Uniform Civil Code of Goa

A quick look at the experience of Goa is useful, as the Civil Code of Goa is often touted by the BJP as an example of a UCC that works. This put in place by the Portuguese colonial authorities and is neither ‘uniform’ nor gender-just. Albertina Almeida has pointed out that marriage laws differ for Catholics and people of other faiths, and this affects the laws governing Catholics after they marry. If the marriage is solemnised in church, the Church can annul the marriage at the instance of one of the parties, as is permitted in church law.

In addition, the ‘customs and usages’ of the Hindus of Goa are also recognised. ‘Limited’ polygamy has been allowed to Hindus and bigamy has been recognised to have civil effects. Other inequalities – on issues of adoption and the rights of illegitimate children – are also allowed for in these laws. When it comes to taking an oath in court, differences on the basis of caste have been accepted.

The positive aspect of Goa's Civil Code is the Community Property Law, which guarantees each spouse 50% of all assets owned and due to be inherited at the time of marriage. Not only does a woman own half the property of her husband, and vice versa, but each partner must take the spouse's permission before disposing of any of those assets. However, this provision can be sidestepped in practice, given the power relations in a marriage, and it has not made any impact on the incidence of domestic violence.

It has also been pointed out that the supposed shared income between the spouses is welcome in higher income brackets with one principal earner, **because it can result in lower taxes on the joint income.**

Clearly, if gender justice is not placed at the centre of this discussion, both uniformity as well as its dilution only reinforces patriarchy as well as majoritarianism.

The women's movement and the UCC – seven decades of a debate

The response of the women's movement to the UCC has taken different forms from the first articulation in 1937 of the demand for a Uniform Civil Code for all religious communities, by the All India Women's Conference. This demand continued to be made by larger sections of the women's movement till the late 1980s. By the early 1990s however, there was considerable rethinking on the issue.

By 1995, what emerged was a broad range of positions, from the continued demand for a UCC, to outright rejection of such a move, and calling instead for reforms within Personal Laws. The general consensus in the women's movement by the end of the 1990s was that the campaign for gender-just laws should be conducted at three levels:

1. a) Support for and initiation of attempts to bring about reform within Personal Laws
2. b) bringing about legislation in areas that are not covered by either secular or Personal Laws – such as domestic violence and right to matrimonial home – thus avoiding a direct confrontation with communities and communal politics, and
3. c) in the long term, setting up a comprehensive gender-just framework of rights covering not just areas covered by Personal Laws, but also the 'public' domain of work (crèches, equal wages, maternity benefits etc) which should be available to all citizens.

In the first two areas listed above, there have been distinct achievements. Divorce law for Indian Christians was made more gender just through sustained engagements within the community by feminists, resulting in the passing of the Indian Divorce (Amendment) Act of 2001. Different versions of model *nikahnamas* that protect the rights of women, have been prepared by Muslim reform groups, though these have yet to be accepted by the community leaders. Interestingly, there have been positive outcomes from even the Muslim Women (Protection of Rights on Divorce) Act of 1986 that was passed to override the Supreme Court decision in the Shah Bano case which asserted that Muslim women were covered by Section 125 of the CrPC, thus entitling them to maintenance under a secular provision. The Muslim Women Act of 1986 took Muslim women out of the purview of this secular provision, provoking outrage from the women's movement and anti-patriarchal voices from the Muslim community, but studies of the working of the Act in the three decades since its passing, show that Muslim women have benefited from its **creative interpretation by courts.**

The tactic of focusing on areas not covered by Personal Laws has resulted in the Domestic Violence Act (2005) which gives women protection from domestic violence and rights to the matrimonial home, and in amendments to the Juvenile Justice Act (2006) that have enabled people of all communities to adopt children legally. The provisions of the Domestic Violence Act are often interpreted by courts in a manner that goes against a wife seeking to use it, but it remains nevertheless, an important legislation.

Four features of the debate within the women's movement at this stage

It is significant that **the term 'uniform' has been dropped altogether as a positive value** from the debates within the movement, even in the positions which reiterate the need for state legislation. Thus, in the proposals made by Saheli and People's Union for Democratic Rights (Delhi), for a compulsory code, or by Forum Against Oppression of Women (Bombay) for an optional code or by the Working Group on Women's Rights (Delhi) for a negotiable common code, the terms used are 'common', 'gender-just' or 'egalitarian' codes, and not 'uniform' codes. This overall disavowal of uniformity by the 1990s is

significant in that it marks the women's movement's recognition of the need to rethink both the Nation as a homogeneous entity, and of the legitimacy of the state to bring about social reform [2].

Uniformity as a value is compatible paradoxically, both with 'secularism' as well as with marginalizing minority cultures. As we see in France, where the 'Muslim veil' can become the problematic assertion of religious difference, while the norm continues to be invisibly marked with the values of the dominant community. For the BJP, it is possible to present itself as a Hindu nationalist party while simultaneously espousing the language of abstract citizenship. Hence the label of 'pseudo-secularist' for those who affirm the need for protection for minorities; or the charge that provisions like separate Personal Laws, special status for Kashmir and minority status for educational institutions are 'anti-secular'. Within a framework of abstract citizenship, in other words, it becomes possible to claim that it is 'communal' to raise the issue of (minority) religious identity, and 'casteist' to assert ('lower') caste identity – while the norm is assumed to be the dominant community and caste.

The following of heterogeneous practices need not be inherently inegalitarian, nor the imposition of a uniform law necessarily the opposite.

The women's movement supports initiatives within communities to bring about reforms, so that the rights of women do not become a casualty to the fear of minority communities that reform of personal laws is only a pretext for eroding their identity in this sharply polarised polity. It is not a paradox that some Islamic states have managed to reform laws in the interests of women. When a minority community is threatened with annihilation, the obvious response is to close ranks. It is when a community is confident that it can afford to be self-critical. What the women's movement demands is the bringing about of gender justice within both religious and secular laws.

A second important development since the 1990s is **the stronger interrogation of the assumed heteronormative family** at the centre of Personal Laws. Even in the 1990s, Forum Against the Oppression of Women had in its Optional Code, broadened the concept of family to include homosexual relations and heterosexual couples living together outside marriage. Today, in 2014, the question of non-heteronormative relationships is even more central for the queer feminist movement, especially in the uncertain situation produced by the Supreme Court ruling (2013) striking down the Delhi High Court judgement (2009) that had legalised adult consensual same-sex relationships.

Third, an issue that had been raised during the 1990s is being foregrounded – rather than valorizing 'monogamy', the recognition that non-monogamy even if it is illegal, is very common. **The need therefore, to reconceptualise all intimate relationships in contractual terms that protect all the women living in them**, so that men in bigamous marriages as well as in relationships that are not formal marriages, are forced to take responsibility for all the women concerned.

A fourth and final point – **the question of women's equal rights to property may need to be reformulated** radically at this stage of the UCC debate. I suggest that the Personal Laws on succession and property represent a point of conflict between the imperatives of the State and those of the Family. The modern state requires legibility in order to mobilize resources towards capitalist industrialization, that is, it must be able to 'see' and organize different forms of property in existence, especially land. Towards this end, the institution of individual rights to property is crucial. All forms of property must become completely alienable and transparent to the state – this development is essential for capitalist transformation of the economy.

The family on the other hand, has its own imperatives of controlling name, descent and passing on of property, a project disrupted by individual property rights. In the light of this, we must view the state's gradual granting of property rights to women under Hindu law – the most recent amendment in 2005 giving women rights to ancestral property as well – as more than a simple triumph of feminist demands. It also represents the establishment of a bourgeois regime of property for the Hindu community at least in principle, which makes land completely alienable by every separate individual owner. In the current climate of widespread resistance to land acquisition by the state, this is a considerable achievement for the state, as it is always easier to pressurize or tempt individual owners rather than communities, to sell land.

It is in this context that we must understand feminist legal scholar and activist Nandita Haksar's critique of some feminist initiatives to press for individual rights to property for tribal women over community rights. She urges the need for a struggle within tribal communities to evolve new customs that are more egalitarian, rather than forcefully introducing from above, individual rights to property [3]. Feminist land rights activists have also become cautious about focusing on joint titling of family plots while losing sight of the state's encroachment on commons and public lands. Common property, they realize, is the biggest impediment to market relations, and they would rather work for collective ownership of the commons, rather than for 'women's rights to land' – this would necessarily be a political, anti-state struggle, allied to other livelihood movements, and would not be a women's struggle but a community movement. Should the larger question of land rights and land acquisition by the state be set aside while discussing individual women's rights to property? Clearly, the feminist debate over the UCC has reached a new stage of complexity, and conversations have begun afresh.

Renaissance
Law College

UNIT-IV

- **UNIT-IV Matrimonial relations and its consequences**
- **1. Matrimonial Property.**
- In Goa, a Hindu man can remarry if his previous wife does not give birth to any male children till the age of 30. And this law is just the tip of the sanctioned sexism across India.
- A recent UN report lists all the ways laws officially support men over women. Quartz culled through and found the worst offenders:
- **Hindu laws of inheritance:** Right now different religions have different personal laws that regulate inheritance, marriage, separation and guardianship in India. In the case of Hindus, the property of a woman who dies without a will is handled differently from that of a man. In the absence of spouse and children, the husband's heirs inherit the woman's estate.
- "Even if the deceased woman was ill treated in her marital home, her husband's mother or father will get her property instead of her own mother or father," says Kirti Singh, the family and property lawyer who authored the UN report .
- **Parsi laws of inheritance:** Despite shrinking numbers, Parsis still penalize 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.
- **Prohibition of Child Marriage Act:** The marriage of a 1-year-old or 10-year-old is valid. The law only prevents the marriages of children; it does not render them illegal once they actually happen. According to the UN, this is one of the main reasons why the custom still flourishes in rural areas.
- The married children, however, have the right to declare it void. A woman can call off a marriage until she turns 20, whereas a man has till age 23.
- **Age of consent:** Sexual intercourse with a girl below the age of 18 is considered rape. But since child marriages are not illegal, a man can legally have sex with his wife even if she is a minor, as long as she is above the age of 15. Further, marital rape is not criminalised in India.
- **Rape of a separated wife:** The rape of a separated wife carries lesser punishment than the rape of any other woman. Forced sexual intercourse with the former is punishable with two to seven years of imprisonment. Prison sentence for the rape of any other woman ranges from seven years to life.
- **Marriageable age:** The minimum age for marriage for a boy is 21, but 18 for a girl. This is a legal extension of the patriarchal mindset that believes that a wife should always be younger than the man.
- **Hindu Minority and Guardianship Act:** Women are still not equal guardians of their children. A father is considered the "natural guardian" of a child, although the custody of offspring under the age of 5 will ordinarily be awarded to the mother.
- **The Goa Law on polygamy:** A law recognises the second marriage of "Gentile Hindu" man of Goa if his previous wife does not have any children before age 25 or if she does not have a male children by 30.
- The new BJP government has promised a uniform civil law applicable to all Indians, irrespective of religion. But it also holds up Goan Civil Code as the model to be enforced all over the country. This polygamy provision hardly makes it upstanding.
- 1
- **No right to marital property:** Upon separation or divorce, an Indian woman is entitled only to maintenance from her husband. She has no right on the assets, such as house or commercial

property, bought in her husband's name during the marriage. So if she leaves him or gets divorced, even years after the marriage, she is potentially without assets. Indian government policies do not consider the work done at home by a woman as having an economic value.

- There are occasional silver linings: Provisions in the Goa Civil Code allow each spouse 50% share in their marital property after divorce.

- **2. Separation of property.**

The recent decision by the Union Cabinet to make further amendments to the Marriage Laws Amendment Bill, 2010 that will guarantee a women's right to 50% of residential property in the case of divorce is an important step for ensuring women's economic security and equality in marriage and divorce proceedings. While there are few statistics on divorce in India, international evidence demonstrates that divorce can have a negative impact on women's economic security. A study undertaken in the US found that after divorce adjusted household income for women dropped on average by 26 percent while for men it dropped on average by 15 percent for men. A similar study found that divorced women are more likely to receive public assistance than men and are also more likely to be poor than divorced men.

In India, the financial impact of divorce can be devastating. Indian women are less likely to receive inheritance than men, have fewer and generally lower paying employment opportunities and are often prevented from working due to family or social expectations or in order to take on childbirth and childcare roles. Therefore, in the case of divorce women will have less opportunity to gain meaningful employment that ensures her economic security. This is particularly the case if the division of property favours men.

Current divorce legislation that gives women access to residential property but does not state how this property should be divided is inadequate to ensure women and children receive a fair proportion of property in the case of divorce. In many cases men have more access to legal information and representation which results in them receiving an unequal proportion of residential property.

The new legislation will ensure that women have access to 50% of movable assets and will give the court the responsibility of dividing these assets between the parties. Some people have voiced concern about the law and argue it will increase divorce rates and encourage people to marry wealthier parties and then claim for divorce. However, the court system is given the responsibility of ensuring that property divisions are appropriate. Furthermore, the new laws will protect women from economic insecurity and poverty and to provide them with the opportunity to divorce in the case of domestic violence or unhappy marriage.

The new amendments to the Marriage Laws Amendment Bill are in line with other legislation such as the Protection of Women from Domestic Violence Act which ensures women's right to residence. The Act gives women the right to remain in shared housing during a domestic violence case – regardless of whether she has any title on the property. They also reflect the notion of Ardhagen which presents a married man and women as being two halves of one being. In this sense women are equal partners and participants in the marriage and, therefore, she should naturally receive 50% of property if the marriage is dissolved.

The new legislation also provides more security for women who are left with the sole responsibility for caring for children. These women have less opportunity to gain employment as their husbands and often receive little financial support from their husbands after divorce. The term dead beat dad's is used in the United States to refer to fathers who do not provide adequate financial support for the raising of their children. In India the alimony clause is extremely weak making it easy for fathers to dodge their financial responsibilities and placing the financial burden of childrearing on women who are generally financially worse, have less secure accommodation and have fewer employment opportunities. By guaranteeing women the right to 50% of property the legislation ensures women have some financial security which can assist with the maintenance of children.

At an international level the division of property and assets generally takes into consideration a range of factors including the assets that each party bring to a marriage including inheritance, the income each

party brings to a marriage, the unpaid work each party completes throughout the marriage, the number of children and the party who will have primary responsibility for childcare after the divorce, the length of marriage and the capacity for each party to earn an income after the marriage.

India must follow a similar system when dividing of property. Given that each case will be different there needs to be flexibility in the law to enable each situation to be assessed individually. The law should ensure that property and assets are divided equally between parties unless there is a specific case for one party to receive more than the other.

Division of property law needs to take into consideration what assets each party brings into the marriage including inheritance and must allow for the fact that women are less likely to receive inheritance than men. It must also consider the income that each party brings into the marriage taking into account the potential restrictions on women's paid employment due to family or social expectations, lack of employment opportunities for women and inequalities in women and men's wages. It must make allowance for the unpaid work undertaken by each party throughout the marriage and ensure this is valued as equal to economic employment and must also consider the number of children in the family and which party will take on the primary caring role after the marriage. Finally, the length of marriage and the capacity of each party to earn an income after the marriage must also be considered when dividing property.

The decision of the Union Cabinet to guarantee women's right to 50% of residential property will ensure women's financial security in the case of divorce, will empower women who experience domestic violence to file for divorce and enshrines in the law women's equality within a marriage. These are all positive steps for Indian women.

(NOTE- ABOVE LEGAL STATUS OF SEPARATION OF PROPERTY IS UPDATED TILL YEAR 2013)

• 3. Maintenance of different system of personal law.

Obligation of a husband to maintain his wife arises out of the status of the marriage. Right to maintenance forms a part of the personal law. Under the Code of Criminal Procedure, 1973 (2 of 1974), right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however, depends on the husband having sufficient means. Claim of maintenance for all dependent persons is limited to Rs 500 per month. Inclusion of the right of maintenance under the Code of Criminal Procedure has the great advantage of making the remedy both speedy and cheap. However, divorced wives who have received money payable under the customary personal law are not entitled to maintenance claims under the Code of Criminal Procedure.

Under Hindu Law, the wife has an absolute right to claim maintenance from her husband. But she loses her right if she deviates from the path of chastity. Her right to maintenance is codified in the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956). In assessing the amount of maintenance, the court takes into account various factors like position and liabilities of the husband. It also judges whether the wife is justified in living apart from husband. Justifiable reasons are spelt out in the Act. Maintenance pendente lite (pending the suit) and even expenses of a matrimonial suit will be borne by either, husband or wife, if the either spouse has no independent income for his or her support. The same principle will govern payment of permanent maintenance. Under the Muslim Law, the Muslim Women (Protection of Rights on Divorce) Act, 1986 protects rights of Muslim women who have been divorced by or have obtained divorce from their husbands and provides for matters connected therewith or incidental thereto.

This Act inter alia provides that a divorced Muslim woman shall be entitled to (a) reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children

(c) an amount equal to the sum of mehr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to the Muslim Law and

(d) all property given to her before or at the time of marriage or after her marriage by her relatives or friends or by husband or any relatives of the husband or his friends. In addition, the Act also provides that where a divorced Muslim woman is unable to maintain herself after the period of iddat the magistrate shall order directing such of her relatives as would be entitled to inherit her property on her death according to the Muslim Law, and to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, standard of life enjoyed by her during her marriage and means of such relatives, and such maintenance shall be payable by such relatives in proportion to the size of their inheritance of her property and at such periods as he may specify in his order.

Where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the magistrate shall order parents of such divorced woman to pay maintenance to her. In the absence of such relatives or where such relatives are not in a position to maintain her, the magistrate may direct State Wakf Board established under Section 13 of the Wakf Act, 1995 functioning in the area in which the woman resides, to pay such maintenance as determined by him.

The Parsi Marriage and Divorce Act, 1936 recognizes the right of wife to maintenance-both alimony pendente lite and permanent alimony. The maximum amount that 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 quantum as permanent maintenance, the court will determine what is just, bearing in mind the ability of husband to pay, wife's own assets and conduct of the parties. The order will remain in force as long as wife remains chaste and unmarried.

The Indian Divorce Act, 1869 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.

Maintenance under Hindu law:

Maintenance is a right to get necessities which are reasonable from another. it has been held in various cases that maintenance includes not only food, clothes and residence, but also the things necessary for the comfort and status in which the person entitled is reasonably expected to live. Right to maintenance is not a transferable right.

Maintenance without divorce

The Hindu Adoptions and Maintenance Act, 1956. Maintenance, in other words, is right to livelihood when one is incapable of sustaining oneself. Hindu law, one of the most ancient systems of law, recognises right of any dependent person including wife, children, aged parents and widowed daughter or daughter in law to maintenance. The Hindu Adoptions and Maintenance Act, 1956, provides for this right.

Maintenance as main relief: for wife

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. Thus, in order to realise her claim, the Hindu wife must prove that one of the situations (in legal parlance 'grounds') as stated in the Act, exists.

Grounds for award of maintenance

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favor 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;

Bar to relief

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 weightage and the bars to maintenance are removed.

Other dependents who can claim maintenance

Apart from the relationship of husband and wife other relations in which there is economic dependency are also considered to be entitled to maintenance by the Hindu Adoptions and Maintenance Act, 1956. Accordingly a widowed daughter-in-law is entitled maintenance from her father-in-law to the extent of the share of her deceased husband in the said property. The minor children of a Hindu, whether legitimate or illegitimate, are entitled to claim maintenance from their parents. Similarly, the aged and infirm parents of a Hindu are entitled to claim maintenance from their children. The term parent here also includes an issueless stepmother.

Maintenance Under Muslim Law

Under the "Women (Protection Of- Rights On Divorce) Act, 1986" spells out objective of the Act as "the protection of the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands." The Act makes provision for matters connected therewith or incidental thereto. It is apparent that the Act nowhere stipulates that any of the rights available to the Muslim women at the time of the enactment of the Act, has been abrogated, taken away or abridged. The Act lays down under various

sections that distinctively lay out the criterion for women to be granted maintenance. Section (a) of the said Act says that divorced woman is entitled to have a reasonable and fair provision and maintenance from her former husband, and the husband must do so within the period of idda and his obligation is not confined to the period of idda.

it further provides that a woman, if not granted maintenance can approach the Wakf board for grant as under section (b) which states that if she fails to get maintenance from her husband, she can claim it from relatives failing which, from the Waqf Board.

An application of divorced wife under Section 3(2) can be disposed of under the provisions of Sections 125 to 128, Cr. P.c. if the parties so desire. There is no provision in the Act which nullifies orders passed under section 125, Cr. P.c. The Act also does not take away any vested right of the Muslim woman. All obligations of maintenance however end with her remarriage and no claims for maintenance can be entertained afterwards. The Act thus secures to a divorced Muslim woman sufficient means of livelihood so that she is not thrown on the street without a roof over her head and without any means of sustaining herself.

Protection to Divorced Women Sub-section (1) of Section 3 lays down that a divorced Muslim woman is entitled to:

- (a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;
- (b) where she herself maintains the children born to her before or after the divorce.

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.

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

IX-Alimony

S.36. Alimony pendente lite. -In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for

dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

37. Power to order permanent alimony -The High Court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, and the District judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

Order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to 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.

38. Court may direct payment of alimony to wife or to her trustee. -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.

Alternatively, as previously mentioned S.125 of Cr.P.C., 1973 is always there in the secular realm Under the Code of Criminal Procedure, 1973 (2 of 1974), right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however, depends on the husband having sufficient means. Claim of maintenance for all dependent persons was limited to Rs 500 per month but now it has been increased and the magistrate can exercise his discretion in adjudging a reasonable amount. Inclusion of the right of maintenance under the Code of Criminal Procedure has the great advantage of making the remedy both speedy and cheap

Order For Maintenance of Wives, Children And Parents

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,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation- For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875(9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is a just ground for so doing.

Explanation- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order. The objective of this section as expressed by Krishna Iyer, J. is to **ameliorate the economic condition of neglected wives and discarded divorcees**

Proceedings under S.125 are not civil, but criminal proceedings of a summary nature. But these criminal proceedings are of a civil nature. Thus, clause (3) of S.126 which empowers that Court to make such orders may be just.

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 criterion is not whether a person is actually having means, but if he is capable of earning he will be considered to have sufficient means. The burden of proof is on him to show that he has no sufficient means to maintain and to provide maintenance.

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 recognizes the right of wife to maintenance-both alimony pendente lite and permanent alimony. The maximum amount that 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 quantum as permanent maintenance, the court will determine what is just, bearing in mind the ability of husband to pay, wife's own assets and conduct of the parties. The order will remain in force as long as wife remains chaste and unmarried.

S.40. Permanent alimony and maintenance

(1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it for the purpose by either the wife or the husband, order 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.

(2) The Court if it is satisfied that there is change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) The Court if it 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.

• 4. Division of assets on divorce.

- When couples split, what is left of their home is a set of walls and roofs - a house, which may in all likelihood be mortgaged. When you **split** from your spouse, how do you take care of what is most often the family's biggest investment?
- Assets are one of the main reasons for dispute when a couple separates. The country's lawmakers are considering granting women the right to their husbands' residential property if they part ways, irrespective of whether it was acquired before or after marriage. In the current draft of the proposed amendment, the wife's share will be decided by the court.

However, under the current laws, a **woman** seeking divorce is not entitled to any share in the husband's property. The ownership rests with the person who is holding the title. "If the property is bought by the husband while the two were together and he holds the title, the wife can make a claim if she can prove her equity in the property," says Kaviraj Singh, managing partner, Trustman, a New Delhi-based law firm.

- A lot of people buy property with own money but register it in the name of their wives to benefit from the lower property registration fee for women. In such a case, the wife can continue to retain ownership.

"In case a property is purchased and paid for by one person and the title is held by the other, the person in whose name the property is will be considered its legal owner," says Singh.

Individual stakes in a jointly-owned house	
Purchase price	Rs 25,00,000
Down-payment	Rs 5,00,000
Husband's contribution	Rs 3,00,000
Wife's contribution	Rs 2,00,000
Loan instalment for Rs 20 lakh @ 10% per annum for 10 years	Rs 26,430
Husband's contribution	Rs 13,215
Wife's contribution	Rs 13,215
Decide to sell property after 2 years at the time of divorce	
Total payment towards loan	Rs 6,34,320
Husband's contribution	Rs 3,17,160
Wife's contribution	Rs 3,17,160
Total contribution towards house ownership	Rs 11,34,320
Husband's contribution	Rs 6,17,160
Wife's contribution	Rs 5,17,160
Individual equities of spouses (%)	
Husband's equity	54.40
Wife's equity	45.60
Current market value of house	Rs 35,00,000
Remaining mortgage (principal amount without any pre-payment penalty or charges)	Rs 17,41,788
Husband's liability	Rs 9,47,670.75
Wife's liability	Rs 7,94,117.25
Claim in proceeds after settling debt	
Husband's equity	Rs 9,56,606.71
Wife's equity	Rs 8,01,605.29

- However, if the other person can prove in the court that he/she funded the purchase, even though the title is held by the spouse, he/she can claim the property.
An inherited property remains with the person to whom it has been transferred.

The ownership of properties comes into the picture only when there is no agreement between the husband and the wife on who will get what. Nowadays, both husbands and wives contribute to the family's investment kitty. In a smooth divorce, they can divide the property based on ownership, individual contribution and mutual understanding.

Joint Properties

If the property has been bought from contributions made by both you and your spouse, it's best to share it on the basis of individual equity. Revisit bank accounts and determine individual contributions towards down-payment and monthly instalments to arrive at the share of each spouse. You can then get the value of the property assessed to arrive at the individual stakes.

"If the property is held jointly, you need to do the paperwork to transfer it to one person. Here, one needs to factor in stamp duty and registration costs as well. Alternatively, if both have contributed, you can consider selling it and dividing the proceeds," says Sumit Vaid, founder and chief executive, Freedom Financial Planners.

Profit from a house sold after being held for three years attracts **long-term capital gains tax**, while any gain from an early sale is included in the taxable income. If you sell a property within five years of purchase, you will have to factor in the reversal of tax deductions that you might have claimed.

Sell and move out:

Sell the property and share the proceeds based on individual equity. If you have an outstanding loan on the property, that will have to be first paid off or deducted from the proceeds.

House retained by one spouse:

If one of you is going to retain the property, the person who retains it can buy out the other person's share on the basis of its market value.

House remains a joint property:

Deferring sale/transfer of property held jointly makes financial sense if you want to minimise the tax implications and benefit from any appreciation. Do have the liabilities and claims properly drafted in your separation agreement.

UNIT-V

- **Unit-V Social Welfare Laws for Women and Non-implementation of protective labour legislation.**

Women constitute half the population of the society and it is presumed that best creation belong to the women. But it is a harsh reality that women have been ill-treated in every society for ages and India is no exception. Women are deprived of economic resources and are dependent on men for their living.

From the cradle to grave, females are under the clutches of numerous evils such as discriminations, oppressions, violence, within the family, at the work places and in the society. In order to improve the condition of women in India, Legislature enacted the large volume of enactments pertaining to industry or work which contain special provisions for women such as: The Workmen Compensation Act, 1923; Payment of Wages Act, 1936; Factories Act, 1948; Maternity Benefit Act, 1961; Minimum Wages Act, 1948; Employees State Insurance Act 1948 and Pensions Act, 1987; etc.

PROVISIONS FOR THE PROTECTION OF WOMEN UNDER LABOUR LAW

Under the Industrial laws the women have been bestowed the special position in the view of their unique characteristics, physically, mentally and biologically. Some of the Acts related to employment were enacted during British period as well as after independence. The main objectives for passing these laws are to enable the women to increase their efficiency, to increase their participation in useful services, to ensure their infant welfare and to provide equal pay for equal work. The important labour legislations covering the women are:

1. The Factories Act, 1948

The Factories Act is a part of labour welfare legislations wherein measures have been laid down to be adopted for the health, safety, welfare, working hours, leave and employment of young persons and women. Exclusive provisions for women have also been incorporated in the Act keeping in view their soft and tender personalities.

Provisions for welfare of women:

- Prohibition of employment of women during night hours
- Prohibition of work in hazardous occupations.
- Prohibition of employment of women in pressing cotton where a cotton opener is at work
- Fixation of daily hours of work at nine.
- Fixation of maximum permissible load.
- Provision for crèche

In every factory where more than 30 women workers are ordinarily employed, there shall be a suitable room for the use of children under the age of six years of such women.

- Provision for washing and bathing facilities. The Act provides for separate and adequately screened washing and bathing facilities for women.
- Provisions for toilets. The factories Act must make it obligatory for any factory owner to maintain an adequate number
 - of latrine and urinals separate for women.
- Provisions for rest rooms and canteens.

- Provisions for mandatory benefits.

All the above provisions are simultaneously provided under The Plantations labour Act 1951, The Mines Act 1952, The Beedi and Cigar workers (conditions of Employment) Act 1966, The Contract Labour (Regulation and Abolition) Act 1970 and The Interstate Migrant Workmen (Regulation of Employment and condition of services) Act 1979.

2. The Employees' State Insurance Act, 1948

The Employees' State Insurance Act, one of the most important social legislation in India, it has been enacted to provide for various benefits in different contingencies. Under this Act, insured women workers get sickness benefit, disablement benefit, medical benefit and funeral expenses along with insured men workers. However, in addition to these benefits, insured women workers also get maternity benefit in case of certain contingencies arising out of pregnancy, confinement, miscarriage, sickness arising out of pregnancy, premature birth of child or miscarriage and death. The duration of maternity benefit available to insured women in case of confinement is 12 weeks, of which not more than 6 weeks shall precede the expected date of confinement. The maternity benefit is paid subject to the condition that the insured women do not work for remuneration on the days in respect of which the benefit is paid, In the event of the death of an insured woman, the maternity benefit is payable to her nominee or legal representative for the whole period if the child survives, and if the child also dies, until the death of the child.

The Employees' State Insurance Act, 1948 provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalization needs and costs. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.

3. The Maternity Benefit Act, 1961

Economic dependence of women is what gives rise to their subordination in society today. Hence to remove such subordination and lay the foundation of equality women too must be made economically independent and must take an active role in all sectors of business today. Problem faced by women in the economic sphere of life are mostly relating to unequal wages and discrimination resulting from their biological role in nature of childbearing. To curb such problems and protect the economic rights of women the legislature introduced the Equal Remuneration Act, 1976 and Maternity Benefit Act, 1961.

A maternity benefit is one that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of average daily wages for the period of her actual absence. The Maternity Benefit Act aims to regulate of employment of women in certain establishment for certain periods before and after childbirth and provides for maternity and certain benefits.

Women can claim benefits under the act everywhere except in factories and the other establishment where the Employee's State Insurance Act is applicable. Women who are employed, whether directly or

through a contractor, have actually worked in the establishment for a period of at least 80 days during the 12 months are eligible to claim the benefits under this act. Cash benefits to women who are absent from work during the maternity leave, are not be less than two-thirds of her previous earnings.

Discharge or dismissal during maternity leave is considered to be void. When pregnant women absents herself from work in accordance with the provision of this act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of discharge or dismissal in such a day that notice will expire during such absence or vary to her disadvantage any of the conditions of her services. Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the act except if it was on some other ground.

Failure to pay maternity benefits or discharge or unemployment of woman due to maternity will result in imprisonment of the employer for not less than three months which may extend to one year and a fine of rupees two hundred which may extend to five thousand.

In **Air India v. Nargesh Mirza** [AIR 1981 SC 1829; 1981 (4) SCC 335], the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it arbitrary and abhorrent to the notions of a civilized society.

The ongoing argument in some circles is that the wage differential between women and men is caused by the need to compensate the higher labour costs employers incur by hiring women, in accordance with special laws to protect maternity. Employers prefer to hire a male instead of female, without the burden of these additional monetary costs. This is however not enough as many employers do not hire married women or dismiss them before pregnancy. The act provides some protection to women economically especially today in an age where single mothers are becoming more prevalent it gives them stability in their lives to have their wages and the security of returning to a steady job. My personal views are that this act is not enough to guarantee women equality and economic security but it is definitely a starting step and though there are several bridges to cross.

4. The Equal Remuneration Act, 1976

Equal pay for equal work for women and men is a vital subject of great concern to society in general and employees in particular. There was a common belief that women are physically weak and should be paid less than their male counter parts for the same piece of work. Women all over the world, had till recently been very much inarticulate and were prepared to accept lower wages even when they were employed on the same jobs as men. Even in the economically and socially advanced countries where remarkable progress has been made, discrimination still exists. In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and poverty, recruited women on a large scale at lower wages and made them work under inhuman condition. International Labour Organization has evolved several conventions to provide protection to employed women. A number of ILO conventions have been ratified by India and some of these though not ratified have been accepted in principle. The principle of ILO has been incorporated in the constitution of India in the form of Article 39, which directs the states to secure equal pay for equal work for both men and women. To give effect to this constitutional provision the parliament enacted the Equal Remuneration Act, 1975.

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.

5. The Workmen Compensation Act, 1923

In any industrial society the problem of labour management relations becomes so important that some sort of social insurance becomes necessary to provide adequate protection from losses caused to the labourers by accidents. With a view to improve the condition of the workmen some social insurance legislations have been enacted. The Workmen's Compensation Act 1923 is one of the earliest pieces of labour legislation, adopted to benefit the labourers. It covers all cases of accident 'arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The amount of compensation payable depends in case of death on the average monthly wages of the deceased workman and in case of an injured workman both on the average monthly wages and the nature of disablement. The Act intended to ensure the rehabilitation of the workman himself or of his dependent. The dependent can claim compensation in both cases i.e. death or injury. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Act, 1948 which is conceptually considered to be superior to the Workmen's Compensation Act.

6. The Minimum Wages Act, 1948

The minimum wages Act was passed for the welfare of labours. This Act has been enacted to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments. The Act provides for fixation by the central government of minimum wages for employments detailed in the schedule of the Act and carried on by or under the authority of the central government, by railway administrative or in relation to a mine, oilfield or major port, or any corporation established by a central Act, and by the state government for other employments covered by the schedule of the Act. The object of this Act is to prevent exploitation of the workers and for this purpose it aims at fixation of minimum wages which employer must pay.

The Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a worker. It would therefore, provide not merely for the bare subsistence of his life but the preservation of the workers and so must provide for some measure of education, medical requirements and amenities.

7. National Rural Employment Guarantee Act, 2005

Recently, the Government of India enacted National Rural Employment Guarantee Act whereby anyone who is willing to provide manual unskilled labour will be offered wage employment for 100 days. This Act provides the enhancement of the livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work.

Priority is given to women in the allocation of work. Gender equality is one of the core elements of this poverty reduction plan which stipulates that at least one third of the labour force should be women with equal wages for both men and women. Various gender related objectives such as provision of hygienic work environments, safe drinking water, and childcare facilities at the work-site, distance of work-place not exceeding two miles from home, health care and nutrition are emphasized.

Women engaged in agricultural farming have to spend long hours under the hot sun but are invariably paid less than their male counterparts. Women's participation in the labour force with no wage discrimination and direct control of resources and assets can substantially enhance her health, child

welfare and socioeconomic status. This employment policy if properly implemented can certainly bring momentous changes in the lives of women.

The employment scheme undoubtedly has a positive impact on gender equity and power equation within the household. An alternative model of development must focus on the enhancement of living standards of rural India where majority of the population resides.

8. The Contract Labour (Regulation & Abolition) Act, 1970

Provisions of crèches were made where twenty or more women are ordinarily employed as contract labour. Female contract labour is to be employed by any contractor between 6.00 A.M. and 7.00 P.M. only with the exception of mid-wives and nurses in hospitals and dispensaries.

PRESENT STATUS OF WOMEN AT WORK

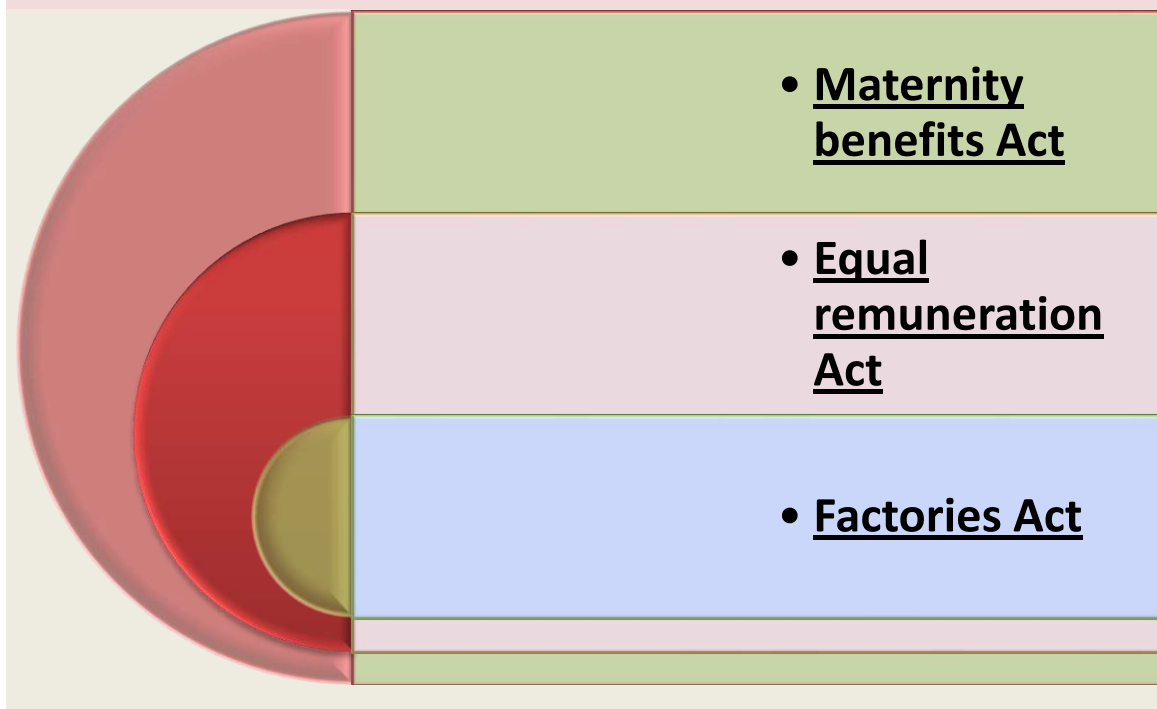
1) Participation of women in the workforce in 2008 is only:

- 19.7% in the urban sector, and
- 37.6% in the rural sector.

2) Women's wage rates are, on an average:

- only 75 % of men's wage rates, and
- constitute only 25% of the family income

3) In no Indian State do women and men earn equal wages in agriculture.



- **1. Maternity benefits Act.**

Introduction

The Maternity Benefit Act, aims to regulate of employment of women employees in certain establishments for certain periods before and after child birth and provides for maternity and certain other benefits.

The Act extends to the whole of India and is applicable to:

1. Every factory, mine or plantation (including those belonging to Government) and
2. An establishment engaged in the exhibition of equestrian, acrobatic and other performances, irrespective of the number of employees, and
3. To every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding 12 months.

The State Government may extend the Act to any other establishment or class or establishments; industrial, commercial, agricultural or otherwise.

However, the Act **does not apply** to any such **factory/other establishment** to which the provisions of the **Employees' State Insurance Act are applicable** for the time being.

But, where the factory/establishment is governed under the Employees' State Insurance Act, and the woman employee is not qualified to claim maternity benefit under section 50 of that Act, because her wages exceed Rs. 3,000 p.m. (or the amount so specified u/s 2(9) of the ESI Act), or for any other reason, then such woman employee is entitled to claim maternity benefit under this Act till she becomes qualified to claim maternity benefit under the E.S.I. Act.

WHAT IS MATERNITY BENEFIT?

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence.

Period For Which Benefit Allowed

The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks in all whether taken before or after childbirth. However she cannot take more than six weeks before her expected delivery.

Prior to the amendment of 1989, a woman employee could not avail of the six weeks' leave preceding the date of her delivery; she was entitled to only six weeks leave following the day of her delivery. However, by the above amendment, the position has changed. Now, in case a woman employee does not avail of six weeks' leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period, i.e. preceding and following the day of her delivery does not exceed 12 weeks.

Who is Entitled to Maternity Benefit

1. Every woman employee, whether employed directly or through a contractor, who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.
2. The qualifying period of 80 days shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration.
3. For calculating the number of days on which a woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages shall also be counted.

4. There is neither a wage ceiling for coverage under the Act nor there is any restriction as regards the type of work a woman is engaged in.

Notice For Maternity Benefit

A woman employee entitled to maternity benefit may give a notice in writing (in the prescribed form) to her employer, stating as follows:

1. that her maternity benefit may be paid to her or to her nominee (to be specified in the notice);
2. that she will not work in any establishment during the period for which she receives maternity benefit; and
3. that she will be absent from work from such date (to be specified by her), which shall not be earlier than 6 weeks before the date of her expected delivery.

The notice may be given during the pregnancy or as soon as possible, after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from work after the day of her delivery. The failure to give notice, however, does not disentitle the woman to the benefit of the Act.

Restriction on Employment of Pregnant Women

1. No employer should knowingly employ a woman during the period of 6 weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. Besides, no woman should work in any establishment during the said period of 6 weeks.
2. Further, the employer should not require a pregnant woman employee to do an arduous work involving long hours of standing or any work which is likely to interfere with her pregnancy or cause miscarriage or adversely affect her health, during the period of 1 month preceding the period of 6 weeks before the date of her expected delivery, and any period during the said period of 6 weeks for which she does not avail of the leave.

Discharge or Dismissal to be Void

When a pregnant woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of discharge or dismissal in such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her services.

Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the Act except if it was on some other ground.

Other Benefits

LEAVE FOR MISCARRIAGE AND ILLNESS

In case of miscarriage or medical termination of pregnancy, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.

LEAVE FOR TUBECTOMY OPERATION

In case of tubectomy operation, a woman shall, on production of prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of operation.

LEAVE FOR ILLNESS

Leave for a maximum period of one month with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation.

MEDICAL BONUS

Every woman entitled to maternity benefit shall also be allowed a medical bonus of Rs. 250, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

Duties of Employers

Important obligations of employers under the Act are:

1. To pay maternity benefit and/or medical bonus and allow maternity leave and nursing breaks to the woman employees, in accordance with the provisions of the Act.
2. Not to engage pregnant women in contravention of section 4 and not to dismiss or discharge a pregnant woman employee during the period of maternity leave.

Right of Employees

Important rights of an employee are:

1. To make a complaint to the Inspector and claim the amount of maternity benefit improperly withheld by the employer.
2. To appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority, within 60 days of the service of such order.

Penalties For Contravention of Act by Employer

For failure to pay maternity benefit as provided for under the Act, the penalty is imprisonment upto one year and fine upto Rs. 5000. The minimum being 3 months and Rs. 2000 respectively.

For dismissal or discharge of a woman as provided for under the Act, the penalty is imprisonment upto one year and fine upto Rs. 5000. The minimum being 3 months and Rs.2000 respectively.

disentitle the woman to the benefit of the Act.

• **2. Equal remuneration Act.**

- The Equal Remuneration Act, 1976 (Act no. 25 of 1976) consists of three chapters. The Act was enacted with the object to provide for equal remuneration to Men and Women workers for prevention of sex discrimination against women in matters of employment. The Act was intended to enact by Parliament on twenty seventh year of Republic of India. Article 39 of the Indian Constitution requires State to direct its policy for securing equal pay for equal work for men and women. President of India promulgated an Ordinance in this regard on 26th September, 1975. The Act extends to whole of India.
- Section 2 provides for definitions of several terms including appropriate government, employer, worker, etc. And Section 3 of the Act provides for effect of the Act over other laws for the time being in force. In short, if the any other laws or regulations seem inconsistent with the provisions of this Act, the provisions of this Act should only survive.
- Chapter II of the Act is very much important so far as it relates to Equal remuneration to men and women worker and relevant matters. Section 4 of the Act speaks for duty of Employer not to pay

any remuneration to any worker less than those which are paid to the worker of opposite sex for similar nature of work performed by him. Section 5 of the Act prohibits discrimination in recruiting men and women worker for the similar nature of work. However, such discrimination could only be made when there is prohibition or restriction under any law as to employment of women on any work.

- Section 6 of the Act makes provisions as to development of women by providing them increasing employment opportunities. Section speaks for constitution of Advisory Committees to advise Government regarding extend of number of women workers in establishments. Section 7 of the Act empowers Government as to appointment of Authorities for dealing with claims and complaints. Further sub sections dealt with powers, procedures, etc. of such Authorities in dealing with such complaint or claims.
- Now, Chapter III of the Act dealt with miscellaneous provisions. Likewise Section 8 of the Act dealt with duty of Employers to maintain registers or other documents relating to workers employed under them. Section 9 of the Act empowers Government as to appointment of Inspectors for investigating compliance of provisions of this Act and Rules if any by employers.
- Section 10 of the Act makes penal provisions, where any employer is in default in doing something required under the Act, should be liable under the Act for penal actions against him. Such actions include imprisonment and fine. Further, Section 11 of the Act describes offences by companies and persons liable thereto.
- The Act was amended by Act of 1987 and Section 12 was substituted as to Cognizance and trail of offences committed under this Act. Section specifies that, such cognizance or actions could be taken by the Courts, only when any complaint is made by appropriate government or person aggrieved by offence. Further, Section 13 of the Act empowers Central Government to make Rules relevant to the purposes of this Act and more particularly the Section provides for a list of matters where Central Government required to make Rules. Moreover, Central Government is also empowered under Section 14 of the Act to direct State Government on relevant matters for the purpose of this Act.
- Section 16 of the Act empowers Government to make declaration as to any differences being carried on in payment of remunerations to the men and women in any establishment based on factor other than sex or gender. Moreover, in such cases Employer should not be held responsible under this Act.
- The Central Government implemented this Act relating to employment being carried on under its sphere or authority like, employment in Postal Department of India, Railway, etc. The Central Government implemented this Act at State sphere where employments are carried on by State Governments like Travelling, Electricity departments, etc. where enforcement of this Act is done by officials of the State Labour Departments.
- The Equal Remuneration Rules, 1976 were framed by Central Government on 11th March, 1976 under the provisions of this Act. The Rules further provides for complaints and claims under the Act and also provides for different forms as specimen of such complaints or claims. The question of validity of these Rules was decided in *Minerva Talkies Vs. State of Karnataka* (1988).

• 3. Factories Act.

What restrictions are imposed to women workers under Factories act 1948?

A women worker has all the provisions of the Factories Act regarding employment and work of adult male workers apply to adult female workers except the following provisions which apply to adult female workers only:

- a. A women worker shall not be allowed to work on or near machinery in motion
- b. A women worker shall be prohibited of employment near cotton-openers.
- c. A company who has more 30 women workers need to facilitate Crèches

d. A woman shall not be allowed to work in a factory for more than 48 hours in any week or 9 hours in any day.

e. A woman shall be allowed to work in a factory only between the hours of 6 A.M. and 7 P.M.

Section 66 in The Factories Act, 1948

66. Further restrictions on employment of women.—

(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:—

(a) no exemption from the provisions of section 54 may be granted in respect of any woman;

(b) no woman shall be 1[required or allowed to work in any factory] except between the hours of 6 A.M. and 7 P.M.: Provided that the State Government may, by notification in the Official Gazette, in respect of 2[any factory or group or class or description of factories,] vary the limits laid down in clause (b), but so that no such variation shall authorize the employment of any woman between the hours of 10 P.M. and 5 A.M.; 3[(c) there shall be no change of shifts except after a weekly holiday or any other holiday.]

(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time

• 4. Inequality in the work place.

GENDER DISCRIMINATION

Discrimination

is a sociological term referring to treatment taken toward or against a person of a certain group that is taken in consideration based on class or category. Gender discrimination refers to beliefs and attitudes in relation to the gender of a person. It is defined as adverse action against another person that would not have occurred had the person been of another sex. It is the practice of letting a person's sex unfairly become a factor when deciding who receives a job, promotion, or other employment benefit. It most often affects women who feel they have been unfairly discriminated against in favor of a man.

Types of Gender Discrimination

There are two main categories of gender discrimination:

- Disparate treatment
- Disparate impact

The first category, **disparate treatment**, is simply treating an employee differently (disparately) because of her or his gender. For example - an employee may be discriminated against by being asked discriminatory questions during a job interview, an employer did not hire, promote or wrongfully terminated an employee based on his or her gender, or employers pay unequally based on gender.

Disparate impact is a more complex concept. It regards company policies or practices that exclude persons of one gender from a job or from promotions although the policy or practice was not designed to do so. There is a disparate impact on one gender. An example is the policy of many fire departments that had strength requirements for hiring firefighters that far exceeded the strength needed by an individual to work effectively as a firefighter. Such excessive strength requirements had a disparate impact on women, many of whom had enough strength to be a good firefighter, but not enough strength to meet the department's requirement.

Discrimination at work can come from either the employee or from the colleague side. Discrimination by colleagues can happen to new employees. They may face sarcastic stares or constant digs made at them by

their colleagues during initial weeks. However, if it persists for along time, it can affect not only the employee but also the employer. The effect on the employee can be huge or meager but the impact on organization remains for a longer time. An employee who is being discriminated witnesses non cooperation from peers and negative feedbacks from subordinates. Discrimination leads to psychological and emotional disturbance, resulting in demoralization and decline in performance standards. It brings down the overall performance, and fuels more discrimination, which in turn increases the number of gaps in one's work further. Discrimination at workplace also affects the society. The socio-economic inequalities get widened and social cohesion and solidarity are eroded. It results in wastage of human talent and resources. The main indicator which indicates that gender discrimination has occurred in the hiring process involves the qualifications of the job applicants. While a slight difference in qualifications between a female and a male candidate does not automatically indicate gender bias (if a lesser qualified male candidate is hired instead of a female candidate), that is, a drastic difference in qualifications has almost always been upheld by the courts as a sure sign of gender discrimination.

EXAMPLE-

- *Discriminatory question during a job interview.
- *Not hire, promote or wrongfully terminate.
- *unequal pay
- *refusal for credit or loan.
- *fire female employees as soon as they got pregnant.
- *workplace harassment of different types, etc.

• **5. Additional burden of domestic responsibilities.**

- **Double burden** is a term used to describe the workload of men and women who work to earn money, but also have responsibility for unpaid, domestic labor. This phenomenon is also known as the "The Second Shift" as in Arlie Hochschild's book of the same name. In heterosexual couples where both partners have paid jobs, women often spend significantly more time on household chores and caring work, such as childrearing or caring for the sick, than men. This outcome is determined in large part by traditional gender roles that have been accepted by society over time. Labor market constraints also play a role in determining who does the bulk of unpaid work.
- Efforts have been made to document the effects of this double burden on couples placed in such situations. Many studies have been done tracing the effects of the gendered division of labor and in most cases there was a notable difference between the time men and women contribute to unpaid labor.
- Some more recent studies dismiss the idea of a double burden as a myth and conclude instead that "on average, women and men across Europe do the same total number of productive work hours, once paid jobs and unpaid household work are added together – roughly eight hours a day."

Causes of the double burden-

Gender ideology-("Gender ideologies are linked to beliefs about appropriate behaviour for men and women")

Labor market constraints-("Women are disproportionately represented in informal work and concentrated among lower-quality jobs within self-employment.")

Societal pressures

There are various societal pressures that combine to create the double burden, including some economic thinking of domestic work, thoughts about net household gain, and the perceived notion that women are more likely to ask for maternity leave than men.

Political pressure

One of the political pressures, it is suggested by Susan Himmelweit is the issue of whom to empower. When there are considerations of policies, politicians usually only consider work as paid labor, and do not take into account the interdependence between unpaid work and paid work. It is also often common to think that women make economic decisions similarly to men. Another political issue surrounding the double burden is what sort of policies directly or indirectly affect those who do domestic work. Some policies that companies have, such as a lower rate for part-time workers or firing workers when they get pregnant can be seen as disempowering women.

Separate notion of paid work vs. unpaid work

As the term double burden might suggest, when people consider paid work vs. unpaid work, they often consider them as two separate entities - that the man or woman is doing one or the other, but not at the same time. In reality, men and especially women often undertake both paid and unpaid labor simultaneously, creating the issue of work intensity, where the person undertakes many activities at the same time in order to compensate for the time necessary to accomplish many things in one day. Household surveys often only let people write down one thing that they are doing at any given time, and do not take into consideration that they may be cooking while cleaning, or sewing while taking care of the children. Because of this, the time taken for child care and other domestic activities may be underestimated. This coping mechanism of undertaking two or more tasks at once can especially be seen in women in developing countries

Increased nuclearization of family

Due to the increasing trend of decreased fertility rate, there has been an increased nuclearization of the family, where families have less immediate relatives to depend on in times of need. Because of this phenomenon, families do not have an extended family to depend on when they need a caretaker or someone to do domestic work, and must turn to market substitutes or a member of the immediate family doing both domestic and paid work instead.



Types of double burdens[edit]

Work vs. family
Family vs. school
Single vs. married parents
Single parent double burdens
Married parent double burdens
Middle-class vs. poor families[edit]

Effects of double burden[edit]

Health effects
Stress
Mortality rate
Absences due to sickness
Loss of sleep
Work intensity
Economic effects

Solutions to the double burden

Family-friendly initiatives
Government initiatives
Child care facility
Workplace initiatives

Renaissance
Law College