

WOMEN'S RIGHTS AND PERSONAL LAWS: A COMPARATIVE ANALYSIS

India is a pluralistic society. Since the time of the Aryans India has been the home of eight major faith and religious groups. Equally pleasing has been the fact that all along ethnicity, religious brotherhood and communal harmony have been observed and sustained as a sacramental duty by the people in India. As a result different personal laws thrived in this country to regulate personal lives of the people in accordance with the faith. It is but natural that in secular country like India, people belonging to various religious dominations have been conceded to the constitution freedom to be governed by their respective personal laws with respect to certain sensitive matters like marriage, divorce and succession. The policy of preserving personal law for Hindus and Muslims in family matters was so strictly adhered to, that the constitution proclaims in Article 372 that the law enforce in the country before the commencement of the constitution shall continue to remain in force until altered or repealed or amended by a competent legislature or any other competent authority. The policy of preserving personal laws for Hindus and Muslims in family matters was so strictly adhered to, that the same was reiterated by Cornwallis in the Preamble to Regulation III of 1773 which declared that, the aim of the government was to preserve the Indian Shastras and the Quran in the matters to which they have been invariably applied....” This policy received recognition by the courts as Sir William Jones of the Supreme Court at Calcutta once observed, “nothing could be more obviously just than to determine private contest according to those laws which the parties themselves had ever considered as the rules of their conduct and engagements in civil life, nor could anything be wiser than by a legislative act to ensure Hindu and Mussulman subjects of great Britain that the private laws which they severally hold sacred, and a violation of which they would have thought the most grievous oppression, should not be superseded by a new system of which they could have no knowledge, and which they must have considered as imposed on them by a spirit of rigour and intolerance.”¹

In India each community has its own personal law. The Hindus, the majority community have their separate family law; so have the Muslims, the biggest minority community. Smaller minority communities, the Christian, Parsis and Jews, whose number, in the context of the total population of India, is not very significant, too, have their own separate family law. Personal laws in India deal with marriage and divorce, maintenance, guardianship and succession, joint family and partition, and can broadly be characterized as 'Family Law'. India has two systems of law, one territorial and one personal. Since personal law deals with the relationship between private individuals, it is clear that personal law cannot be public. A Muslim is subject to Islamic Sharia, a Jew to Halakhah, a Christian to Cannon Law, and a Hindu to Dharmashastra. Women's legal status, as affected by these laws, constitutes, therefore, a key symbolic battleground over which conservatives and progressive forces are struggling to realize their visions of the future.

Personal laws are legislated. The state may or may not be the ultimate source of their authority, but it has made them legally and socially authoritative and has given its authority to them. Just as if family were personal in the sense of the word, it would not need to be governed by law, if the authoritativeness of the personal laws were other than legal, there would be no need to legislate them. Women have for a long time been marginalised in almost every culture and context without being protected by any system of law. Law was originally intended as an instrument to enhance our social state, has its foundations on the western philosophy of the enlightenment. Locke, as well as Rousseau, on the base of Aristotle's natural law, argued that it was natural for a wife to be in subjection to her husband. Hence, she cannot be seen as a naturally free and equal person. Similarly in the south eastern Indian traditions, the law of Manu ruled, 'as daughter women should obey their fathers, as wives obey their husbands, and widows obey their sons.

Around the world, real discrimination against women persists, much of it in blatant, tolerated, legal form. It makes no sense that the right to equality has been affirmed repeatedly, in international law, National Constitutions and various treaties. Name them: the universal

declaration of human rights, the international covenant on civil and political rights, CEDAW - all provide for equality before the law and equal protection. The Beijing Plan for action adopted at 1995 United Nations Fourth World Conference on women states the need to 'ensure equality and non discrimination under the law and in practice and to 'revoke any remaining laws that discriminate on the basis of sex. Many discriminatory laws still relate to family law, limiting a women's right to marry, divorce and re-marry, and allowing for such marital practices as polygamy. Normally, polygamy is not permissible, as even in the Qur'an, it is allowed in certain exceptional circumstances only, such as for instance, to help widows.

From the cradle to the grave, females are the victims of numerous vicious acts such as discrimination, oppression and violence, within the family, at the workplace and in the society. Laws that explicitly discriminate are only the tip of the iceberg. The denial of equal opportunity in education and employment, exclusion from political representation, deprivation of sexual and reproductive rights, plus the use of social forces and physical violence to intimidate and subordinate women – all these violations are of the rights to equality.

In many countries, Abortion is a criminal offence that burdens women with medical consequences, often fatal, of unsafely terminating a pregnancy. Marital rape is explicitly excluded from rape laws in many nations – for example, India, Malaysia, and Tonga. All in case of so called honour killings, men who murder their wives are exempt from punishment by law in Syria, Morocco and Haiti. Although Personal status laws are discriminate to the rights and freedoms of all individuals, thus impact on some groups tend, to be much harsher. These usually include women, children, religious dissidents, secular individuals, individuals who are not member of a recognised community, e.g.(the Bahai in Egypt or Protestants in Israel) and persons who do not necessarily subscribe to the particular version of religious or customary law which are recognised and sanctioned by the court. For example in the case of women's rights, many religious traditions either explicitly discriminate against women or favour male relatives over females in familial matters such as marriage.

Under Islamic law in Israel, Egypt and India Muslim women's rights to divorce is severely truncated vis-à-vis the Muslim men who have a relatively easier access to divorce. The situation is no different for Jewish women who need to bribe or beg their husbands to receive a divorce writ (GET) to be formally released from the bound of marriage or for the Hindu women who have been traditionally denied or equal share in allocation joint family property. Unfortunately, individuals are usually not allowed to make their own decisions freely, especially when they dissent from the community line of thinking, and even when they are courageous enough to raise their voice against the community, they often do not find broader society embracing liberal values and waiting to welcome and protect them against the possible retaliations of their culture communities. This is what happened to the seventy five year old Shah Bano when she decided to step outside of her communal boundary to make use of the so called secular remedies guaranteed by the Indian state, and this is what could possible happen to a Palestinian women, should She ever dares to leave her own religious community and seek refuge in the larger Jewish polity in Israel. Other personal laws that discriminate on the basis of sex range from the denial of women's right to vote in Kuwait, and to the prohibition against women driving in Saudi Arabia.

By systems or regimes of personal laws, we refer to legal arrangements for the application within a single polity of several bodies of law to different persons according to their religious or ethnic identity. Such personal laws typically co – exists with general territorial law in criminal, administrative, and commercial matters. In other words, in such systems there is often not a unified or a territorial body of family law. Personal law in India deal with marriage and divorce, adoption, wills intestacy and succession, joint family and partition and can broadly be characterized as 'family Law'. It is ironic that while all women suffer from the same or similar discrimination at home or within their families, the family or personal law applicable to them to varying degrees of discrimination. We are thus confronted with a strange situation that while a Hindu, Christian or Parsi woman can sue her husband for bigamy under the criminal law code for punishment of up to seven years

imprisonment, Indian Muslims personal laws allows a Muslim man to marry up to four times.

After the partition, the persistence of colonial constitutions of personal law was considered as a serious impediment to achievement of national unity by the leaders of independent India. National unity, Gandhi ji and Nehru believed, was to be achieved only through establishment of a secular state. In such a state, they envisioned, communal and secular differences had to be wiped out and the people of India had to learn to think themselves first and foremost, as members of a composite Nation, not as members of a particular religious group or caste. In this regard, an application of different bodies of law to citizens with different ethnic and religious backgrounds was simply not helping the cause of National Unity. Hence, the next logical step for the new government was to end the normative plurality of its field of personal status by enacting a uniform civil code (UCC) that would be applicable to all citizens throughout the National territory. That desire of the founding fathers was embodied in article 44 of the (1950) constitution which stipulated that the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

In 1954, Parliament passed a new special Marriage Act that eliminated the onerous denunciatory coast of availing of civil Marriage. The framers of the constitution of India had all these factors in their minds while framing the constitution for the biggest democracy of the world. The authors of the Indian constitution were convinced that plurality of religions presented the most captivating piebald of Indian cultural tapestry; therefore the same had to receive equal protection at the hands of the rulers and the ruled.² It is based on the philosophy of “SARVA DHARMA SAMBHAV” and belief that all religions are equally good and efficacious pathways to perfection or God realisation.³ In modern day parlance and for want of a distinct term, it became to be called and understood as “Secularism”. Secularism is a bridge between religions in a multi-religious society to cross over the barriers of their diversity. Secularism is the basic feature of constitution as a guiding principle of state policy and action. Secularism in the positive sense is

the cornerstone of an “Egalitarian and forward looking society which our constitution endeavours to establish. It is a fruitful means for conflict resolution and harmonious and peaceful living. It provides a sense of security to the followers of all religions and ensures full civil liberties, constitutional rights and equal opportunities.”⁴ To provide for a lasting guardrail, the word “secular” was incorporated in the preamble of the Indian constitution in 1976.

As a result, different personal laws were enacted and amended from time to time and continue to thrive in this country to regulate the personal lives of the people in accordance with their faith. The applicability of personal laws in a country like India depends solely on religion / faith. Hindus, Muslims, Christians & Parsis are governed by their own personal laws such as Hindu Law, Muslim Law, Christian Law and Parsi Law respectively. From the religious point of view, the Personal Law is defined as “Body of law which apply to a person or to a matter solely on the ground of his belonging to or its being associated with a particular religion”. Every religion follows their own Personal Laws in the family matters which to a great extent differ from one another. The laws and customs regulating marriage and divorce, matters relating to infants and minors, adoption, wills, intestates and succession, joint family and partition were listed under Entry 5 in the concurrent list and were left to be subjected to their personal laws.⁵

. The present Hindu Act of 1955-56 applies to such person who are Hindus (including Buddhists, Sikhs & Jains) by religion; whether by birth, conversion or otherwise. It does not and cannot apply to person who is not a Hindu (or Buddhist, Sikh or Jain) by religion or who is a Muslim, Christian, Parsi or Jew by religion.

. Muslim law appear from the Muslim Personal Law (Shariat) Application Act 1937 and also the proceeding enactments commonly known as civil code act, applies to persons who are Muslim by religion, whether by birth, conversion or otherwise. This act defines the scope of Muslim Personal Law including all affairs regarding succession, marriage, dissolution of marriage, guardianship and property rights. Muslim personal law is largely un-codified and legal decisions are

made by Court on the basis of Quran, Sunnat and Hadith (traditions / sayings of Prophet Mohammed, PBUH).

. The Christian law would appear from the provisions of the Indian Christian Marriage Act of 1872, the Indian Divorce Act of 1869 and the Concert Marriage Dissolution Act of 1936. It would apply to a person on the ground of his or her being Christian by religion.

. The Parsi Law as would appear from the section 2(7) of the Parsi Marriage and Divorce Act 1936, would apply to a person not merely on the ground of his or her belonging to the Parsi community but on the ground of his or her being a Zoroastrian by religion.

. The Jew Community is widely dispersed and has their Personal law based on Rabbinical Code. In India there is no statutory law on marriage and divorce for the Jewish community.

GENEALOGY OF RELIGIOUS LAWS:

HINDU LAW

Hindu law has a very old ancestry. According to orthodox view there was an inseparable relationship between law and Dharma. The sources of law and Dharma were common. The Hindu Seers and Sages regarded the law as revelations of God and therefore it was given the highest respect in the society. In order to bring certainty to them, the laws were codified by the Dharmashastra writers and since it is considered a divine law, it cannot be changed by any human agency. According to Mayne, "Hindu law is the law of "Smritis" as expounded in the Sanskrit commentaries and digest which are modified and supplemented by custom, is administered by the court". Smritis are foundation of Hindu law.⁶

MUSLIM LAW

The nucleus of Muslim law had come into existence along with Islam. Its original sources were the Quran and the Hadith (sayings of Prophet) or Sunnat (traditions of Prophet). Muslim believes in the divine origin of

their Holy book which according of their belief was revealed to the Prophet Mohammad (PBUH) by Angel Gabriel. Islam recognises all the earlier Prophets and considers Zaboor, Taurate, and Injeel, as divine books besides Quran. Islam is the only religion in which the law giver is God. It cannot be (Islamic Law) amended, repealed or altered since it is a divine law, while all other laws can be repealed, amended or altered. It is applicable to those who are believers and have belief in God and acknowledge his authority over their actions. It is contained in the definition of Islam. Encyclopaedia Britannica defines Islam as follows; The root "SLM" in Arabic means 'to be in peace' to be an 'integral whole', from this root comes Islam, meaning 'to surrender to God, law and thus to be an integral whole' and Muslims, is a person who so surrenders.

It is quite evident from the above definition that in Islam God is the only law giver and a Muslim surrenders himself to God's law. In the present day world the term 'Muslim Law' is generally applied to Islamic private law, mainly that of personal status, family relations and succession. This law remains applicable to the Muslim in numerous countries which are either Muslim majority states or have large Muslim populations. In very few countries Muslim family law has, however, remained in its original un-codified form, in major parts of the world it has undergone a massive process of codifications and reforms, mainly in the areas of bigamy, divorce and women's rights.

CHRISTIAN LAW

The Indian Christian marriage Act, 1872 defines the term "Christian" as a person professing the Christian religion. Under the Act the term Indian Christian including Christian descendants of native Indians converted to Christianity.⁷ A person professing Christian religion, even, if not baptised is a Christian. The expression person who professes the Christian religion also includes children of such person. The Indian Christians have no personal law and their domestic obligations have to be governed by the English law.

PARSI LAW

The Parsis come and settled down in India largely from Persian Province Pers or Pars from which the word 'Parsi' is derived. The Indian

Parsis belong to the Zoroastrian faith, and in that sense, the words 'Parsis' and 'Zoroastrian' are synonymous. Zoroastrian is founded on the belief in one God and on the basic tenets of good thought, good words and good deeds. In modern India, Parsi law applies to:⁸

- i. Persons who are descendants of Persian emigrants, who are born of Zoroastrian parents, and who profess Zoroastrian faith.
- ii. Persons whose father is (or was) a Parsi and mother an alien but admitted to Zoroastrian faith.
- iii. Zoroastrian from Iran, who are either temporarily or permanently residing in India.

JEWISH LAW

A Jew is a person of the Hebrew race. Any person who professes or practises Jewish religion is a Jew. The Jewish community is widely dispersed and have their Personal Law based on rabbinical code. In India there is no statutory law on marriage and divorce for the Jewish community. In the sixteenth century Mosaic and Talmudic law was compiled and was styled as 'Shulchan Anuch'. Its third part was known as Eben-Ha-Ezen which contains the matrimonial law. This was the basis of Dr Melziner for his work "Jewish Law of Marriage and Divorce". This work is accepted as an accurate and authoritative account of the Jewish law. In India, the term 'Jew' does not refer to a race, but to a religion....

Women Rights under Different Personal Laws

One can find supremely beautiful words in the scriptures of all religions but at the same time one can also find extremely oppressive, even horrifying words about women in their scriptures. However, our purpose is only to find out what are women friendly in all religious scriptures and also to know whether tenets of various religions create any obstacles in the empowerment of women in all walks of life and spheres of activity. It is not a subjective exercise to prove superiority or precedence of one religion over the other; it is an objective effort to show that religion (*by and large*) has not been a factor responsible for the overall backwardness of women.⁹

One marked feature of most RPLs (Religious Personal Laws) is that women have fewer rights than men. A common thread woven through all of India's religious personal law system is the Patriarchal dominance of men and the unequal treatment of women. The history of legislative reforms of RPLs in the independent Indian state shows that the goal of gender equality is frequently subordinated to the other political considerations. The so called religious personal laws deny women even formal legal equality in personal relations. Though the law provide for a judicial procedure to enforce the law by way of courts as well as the penalty for violating the law; women being socially and economically subservient are either unaware or enable to enforce these legal rights through courts. Apart from the ongoing struggle for a uniform Civil Code in accordance with the constitutional framework, today the Indian women are fighting for rights in marital property, denied uniformly to them across all religious boundaries. In a country where women continue to be property themselves social acceptance of women's rights and an equal social status, is difficult to achieve and the road ahead promises to be long and bumpy.

Women in Hinduism: According to Hinduism, the female was created by Brahman as part of the duality in creation, to provide company to men and facilitate procreation, progeny and continuation of family lineage. If we study the ancient history, we find that women held top religious and social positions in the Vedic period. There are references to women Sages and Saints in Vedas and Upanishads who were greatly revered for their religious and spiritual wisdom. Hindus have elevated women to the level of divinity.

On the other hand, as per tradition, a woman has limited freedom. She is a dependent entity, in a household dominated by male members. Manu Smriti preaches more restricted rules for women considering women as a property.

Women in Islam: Islam is the first religion in the world which recognises women as legal entity and gave her all rights that man enjoyed. Islam brought about liberation of women from bondage and gave her equal rights and recognized her individuality as human being. Islam improved

the status of women by instituting rights of property, ownership, inheritance, education, marriage and divorce.

The Qur'an came out with a radical declaration that men and women are equal and women's rights are equal to their duties. Maulana Abul Kalam Azad, a noted commentator on the Qur'an describes this verse as a revolutionary declaration of gender equality. The Shariah laws must be updated in light of this basic Quranic injunction. Till today, because of resistance on the part of the ulama and jurist, this basic principle continues to be in limbo. The Quranic injunctions in respect of women were not acceptable in a particular culture, given that the injunctions directly challenged the ostensible authority of men and made women equal to men in every respect.

Women in Christianity:

“There is neither Jew or Greek, Slave nor free, male nor female, for you are all one in Christ Jesus”
Galatians 3:28

Christianity emerged from Patriarchal societies that place men in position of authority in marriage, societies and government. For early centuries, women were not ordained to the priesthood but Christianity developed a monastic tradition which included the institution of convent, through which women as religious sisters and nuns, played an important role in Church life and have continued through history to be active; particularly in the establishment of schools, hospitals, nursing homes and monastic settlement. Both complementarian and egalitarians see Jesus as treating women with compassion, grace and dignity. The historian Geoffrey Blainey wrote that women were influential during the period of Jesus brief ministry than they were in the next thousand years of Christianity.

Women in Parsi Religion: Parsi women are discriminated against by laws which have no basis in the communities' religious belief. The Parsis, is a community with 90% literacy, have among the most unjust inheritance laws in the country today. This finally only goes to prove the discrimination and gender biases do not disappear with Progressive education. In Parsi Law Association there were no women on any of the

panel which made the legislative recommendation. Parsi women also share the fear of extinction of community and most of them have resisted changes in their personal laws.¹⁰

Women in Judaism: The role of women in Judaism is determined by the Hebrew Bible, the Oral Law, By Custom, and by non religious cultural factors. Marriage and Family Law in biblical times favoured men over women. For example, a husband could divorce a wife if he chose to, but a wife could not divorce a husband without his consent. Laws concerning the loss of female virginity have no male equivalent. These and other gender differences found in the Torah suggest that women were subordinate to men during Biblical times.¹¹ Women were dependent on men economically. Women generally did not own property except in the rare case of inheriting land from a father who did not bear sons.

All the codified and non-codified religions have been dominated and controlled by men, so all the tenets propounded in them push women to a subaltern status. This can be delineated by examples from some important religions:

In Hindu law she is seen as merging her identity with her husband and the two are considered one entity, represented by the husband. In Muslim law she is equal to half a man for all legal and social purposes. Christianity preaches the low status of women. Jewish and Christian commentators chose to view Eve, and by extension women, as the source of evil and sin in the world. Christianity also taught that the ideal woman was one who lived a celibate and chaste life; by renouncing her sexuality. Jewish traditions and commentaries in the Old Testament continued to view women in a largely negative light.

Marriage under Different Personal Laws

Marriage is a socially or ritually recognised union or legal contract between spouses that establishes rights and obligations between them, between them and their children, between them and their in-laws. The Act of Marriage usually creates normative or legal obligations between

the individuals involved, and any offspring they may produce. It is often viewed as a contract. Marriage can be performed in a secular civil ceremony or in a religious setting via a wedding ceremony. The right to marry is a component of the right to life under Art 21 of the constitution of India which says, 'No person shall be deprived of his life or personal liberty except according to procedure established by law'. This right has been recognized even under the Universal Declaration of Human Rights, 1948, under Art.16.¹²

HINDU MARRIAGE

Hindu conception of marriage is totally divine and the marriage bond is unbreakable and even the death of the husband cannot free the wife of the bond of marriage. According to the famous Hindu Jurist Manu's description of women, 'While young, she remains under the control of her father, after marriage under the control of her husband and on his death, under control of her sons. She does not deserve complete independence at any time.'¹³ It means that a woman is in perpetual tutelage from her birth till death. She remains under the protection of her father or his representative till her marriage, after marriage the groom was to be the swami and protector of the wife.

Duteous girl obey her father
And the husband sways the wife
Son controls the widowed mother
Never free is women's life,
From her father, son or consort
Women never should be free
For her wilful separation
Stains her husband's family
(Manu,V,148to150)

Marriage is defined as the act, ceremony or process by which the relationship of the husband and wife is constituted. According to the Hindu Law, marriage is a gift by the father of his daughter to the husband. The daughter has no choice; she need not consent and may not even be conscious of the nature of the act and its effect upon her

life. Marriage as defined by Raghunandan, a Hindu marriage implies the acceptance of the bride as wife by the groom through a ceremonial process which is technically, known as Kanyadan.¹⁴ The bride is not, in one sense, real party to the marriage which is transaction between the bridegroom and her guardian in which she is the subject of the gift. The Hindu law vest the girl absolutely in her parents and guardians by whom the contract of her marriage is made and her consent or non consent is not taken into consideration at all.

According to Rig-Veda, the girl is the property of the God of Fire, who has entrusted the father with the responsibility of bringing her up and to give her in gift to a virtuous person by invoking the Fire God to witness the act of giving.

Under the Hindu Law the object of marriage was sublime indeed. As Apasthamba put it; Marriage was meant for doing good deeds and for attainment of Moksha. One of the characteristic features of a Hindu Marriage has been that it was more connected with the performance of religious duties and begetting of a son, who enables a man to get deliverance from the sufferings of Hell.¹⁵

Hindu law recognises eight types of marriage which cover almost every conceivable method of procuring a girl or women. Four of them were approved and four others were disapproved and were considered to be disgraceful. Approved forms of marriages are Brahma, Daiva, Arsha and Prajapatya and unapproved form of marriages are Paishach, Asura, Gandharva & Rakshasa. They were considered disgraceful because in these form even abduction, kidnapping and rape are recognised as form of marriages.

Hindus have prescribed very elaborate ceremonies for marriage, though in modern law all these ceremonies are not mandatory. Under the modern law, a Hindu marriage may be validly performed in the following two modes:

- . Shastric rites and ceremonies
- . Customary ceremonies

To alleviate the women from the orthodox customary role and often unbearable social conditions, major reforms were undertaken and one

of them is the Hindu Marriage Act 1955 to govern the family laws of Hindus.

MARRIAGE under THE HINDU MARRIAGE ACT 1955:

The Hindu Marriage Act, 1955 by providing several matrimonial remedies including mainly divorce and nullity of marriages has seriously eroded its sacramental character. The right and privileges to Hindu women were granted in the year 1955 in four different Acts which are commonly known as Hindu Code Bill. The act effected radical changes in the law of marriage of Hindus. It brought uniformity in the Hindu Law of Marriage by codifying it. These acts apply to all the Hindus by religion including Buddhists, Jains and Sikhs but excluding Muslims, Christians, Parsi and Jews by religion. The main features of the Hindu Marriage Act of 1955, which were amended in year(s) 1956, 1960, 1964, 1975 and 1978, are that the Hindu Women including Buddhist, Jain and Sikh for the first time got the right to seek Divorce and Judicial Separation under certain conditions. Marriage solemnised are held voidable under certain conditions. Bigamy is held as an offence punishable with imprisonment and sufficient cause to seek divorce. The act also recognises the divorce, right to re-marriage after the period of limitation for appeal. More importantly, it recognises the consent of both the parties to the marriage as essential. Prior to the enactment of Hindu Marriage Act. Hindu women could not even think of all these rights. The acts make the marriage voidable and may be annulled by a competent court on some specified grounds and if it is in contravention of the conditions specified in clause (ii) of section 5 of this act.¹⁶

The Hindu Marriage Act of 1955 by providing several matrimonial remedies including mainly divorce and nullity of marriage has seriously eroded its sacramental character. According to S.T. Desai, the revising author of Mulla,s ' Principles of Hindu Law' concludes that "A Hindu marriage under the Act , it is submitted, is not entirely or necessarily a sacrament but a union of one man with one women to the exclusion of all customary rites and ceremonies of either party essential for a marriage, and directly it creates a relation and status not imposed or defined by contract but by law".¹⁷

. The Hindu Marriage Act, 1955 while maintaining the divine character of the marriage has given substantial relief and rights, which were previously denied to them, although sacramental character of Hindu Marriage is lost, yet the out –sketch of religious rituals in respect thereof has still been preserved. In this regard, the Marriage Laws (Amendment) Act, passed in 1976 made another onslaught upon the sacramental character by providing remedies like divorce by mutual consent.¹⁸ Sec. 7 of the Act of 1955 leads only to this conclusion that although sacramental character of Hindu Marriage is lost yet the out – sketch of religious ritual in respect thereof has still been preserved.

. The child marriage restraint act, 1978 enhanced the lower age limit of the bride and bridegroom, under this act the bride must have attained the age of 18 and the bridegroom of 21 years. The indirect but necessary effect of this provision is that a bride marriage could be solemnised only on completion of 18 years of age and competent to choose her life partner. It was on account of the Act of 1978 that Sec.6 of the Hindu Marriage Act was deleted. The consent of her guardian in marriage would be meaningless.¹⁹

. The provision for registration of Hindu Marriage has been provided for the first time. The act also lays down conditions of a valid marriage in section (5) of Hindu marriage act 1955. The court also expressed that if Saptapadi and also Kanyadan were not performed marriage cannot be said to be solemnised according to Hindu rites and rituals.

. Marriage between the persons belonging to the same Gotra has been recognised. It has introduced Monogamy.²⁰

Marriage under Muslim Personal Law –

Marriage (Nikah) is defined to be a contract which has for its object the procreation and the legalizing of children.

The institution of marriage in Islam has three aspects: Legal, Social, and religious. Legally, it is a contract and not a sacrament. The social aspect of marriage has three important factors: Islamic law gives to the women a definitely high social status after marriage; Prophet Mohammed (PBUH) encouraged the status of marriage both by example and

percept. He positively enjoined marriage to all those who could afford it. In fact marriage is a sign of bounty of Allah. Marriage among Muslims is not a sacrament, but purely a civil contract though solemnized with recitations of certain verses from the Qur'an. In India, marriages among all sets of Muslims are usually solemnized by persons conversant with the requirement of law and they are designated as Kazis or Mullas. Two persons, formally appointed for the purpose, act on behalf of the contracting parties, with certain number of witness.

The Qura'nic description of man and woman in marriage: "They are your apparels and you are their apparels", implies closeness mutuality and equality.

(Surah:Al-Baqarah:187)

"And they (women) have rights similar to those against them in a just manner"

(Qur'an2:228)

Islam has granted equal rights to both man and woman. The spouses are equally dependent; they are created for each other to live in harmony and coexistence. As the Holy Quran says,

"HE created you from a single soul".

(Q3:36)

The relation between man and woman is of love and kindness. They are incomplete without each other and are the source of peace and harmony to each other. According to the holy Quran:

"He created for you help mates from yourselves that ye might find rest in them, and he ordained between you love and mercy". (30:21)

Marriage in Islam requires a contract between two equal partners, the women is to be a subject rather than an object in the marriage contract. The contract, in sum is a legal written document between two adults which entails an offer by one partner and an acceptance by the other in the presence of two witnesses. The terms of marriage are usually embodied in a deed called Nikah Nmah. In the Nikah namah are incorporated such conditions as the amount of dower, mode of its payment, matters relating to custody of children and all other conditions which the spouses desire to stipulate²¹

Women's problem in the context of marriage are rooted in the image of her as a dependent passing from the custody of her father to that of her husband, but according to Islam women enjoy equal right of selection or choice.

"It is far from the truth to say that in Islam women are helpless, dumb creatures. Islam has given them freedom of choice like men. In contracting marriage the consent of a woman, attaining the age of puberty must always be sought". (Bukhari)

The Muslim woman has the freedom of marital choice, her consent is essential for the validity of the marriage contract. A grown up girl shall be asked permission about herself and her permission is her silence and if she declines, there shall be no compulsion on her. The Islamic laws have recognised women as free and responsible member of society, and have assigned to them a convenient position. Muslim wife retain her distinct individuality even after marriage and she never assumes her husband's name. Islam has treated women with great sense of dignity, thus the verses 2:228 and 33:35 declare sexual equality in no uncertain terms. The verse 33:35 is much more fundamental in this respect as it clearly accord women equality with men in all respect.

The Quran verses 2:228: "And women have rights similar to those against them in a just manner" is quite definitive in this respect.²²

Maulana Mohammed Ali, a noted Islamic commentator says on the above verse: "That right of women against their husband are here stated to similar to those which the husbands have against their wives. The statement must, no doubt, would have caused a stir in a society which never recognised any right for the women. The change in this respect was really a revolutionising one for the Arabs. This declaration brought a revolution not only in Arabia but in the whole world. Women were given a position equal in all respect to that of men, for they were declared to have rights similar to those which were exercised against them. The women could, no longer be discarded at the will of her LORD but she could either claim equality as a wife or demand a divorce.

In Muslim law the word 'Nikah' or 'Aqd-E-Nikah' literally means to unite or the tie to unite. Marriage or Nikah is both a civil contract as well as a religious duty. Almost all Muslim jurists agree that Nikah is a Sunnat-e-muwakkida, i.e. a precept enjoined upon by the prophet. Hence marriage as a civil contract invests the wife with more rights under the Shariat law, in addition to those which she already possesses, e.g. right to maintenance in keeping with her status, right to be treated equally and justly if the husband has more than one wife. She has a right to claim dissolution of marriage on the specified grounds, she is entitled to dower and can refuse co-habitation if it is not paid. Right to be provided with a separate sleeping apartment, right to visit and be visited by her parents or children by a former husband with reasonable frequency and right of inheritance are acquired. The most remarkable feature of Muslim jurisprudence is, that even at the beginning of the development of their juristic thought, they squarely considered the marriage essentially as a civil contract – a concept which developed in the western world fully only after the industrial revolution.²³

Since it is a social contract to a large extent, no formal rites are necessary and performance of ceremonies is not essential for a valid marriage. A woman is married to a person according to the procedure provided for in a Nikah and she can straight away go to the house of her husband. For a valid marriage, the consent of the girl is necessary. The formal conclusion of the contract of marriage is termed as AKD.

Mahr : The concept of Mahr is inherent in the marriage contract. The Mahr is not a gift, and is a mandatory requirement for all Muslim marriages whereby an amount of money or possessions is paid by the groom to the bride at the time of marriage for her exclusive use. The Mahr does not have to be money, but it must have monetary value. Therefore "it cannot be love, honesty, being faithful, etc., which are anyway traits of righteous people.' Following certain Muslim authorities, Mulla defines it as 'a sum of money or other property which the wife is entitled to receive from the husband in consideration'.²⁴

POLYGAMY – Polygamy was almost universally prevalent among the royalty, nobility and well-to-do classes. Polygamy in Islam is

conditional as Quran stipulates justice and equal treatment to all wives. In pre –Islamic Arab society polygamy was unlimited, but Islam imposed restriction and limitation upon it up to four but at the same time Quran states :“ Marry the woman who seem good to you, two, three or four and if you fear that you cannot do justice and equality with all, then you shall marry one”.(Quran, 4:3))²⁵

The Prophet Mohammed’s (PBUH) original intention was to provide protection to widow and orphans. The Prophet laid stress on monogamy and praised it as the ideal form of marriage. It is evident from the Qura’nic verses that the permission to marry more than one wife is conditional and the conditions are very stringent, making it almost impossible to observe. This is why some of the Muslims countries have banned polygamy without the permission of the court.

Inter – sect and inter-religious marriage: In Muslim law, there is no prohibition of inter-sect marriages, and the Muslims belonging to any sect can inter-marry. Such marriages are perfectly valid, and do not imply any change of sect or school on the part of either party. Inter Religious Marriages are prohibited under Muslim Law. The Shias are very strict as to inter-religious marriages. Under the Shia law, the marriage of Shia male, or female, with a non Muslim is null and void. A Muslim male or female can perform a valid marriage with a non-Muslim under the provisions of the The Special Marriage Act, 1954 as a civil marriage.²⁶

MARRIAGE under CHRISTIAN LAW:

INDIAN CHRISTIAN MARRIAGE ACT, 1872(Sec.4-9)

The laws regulating to solemnisation of marriage among Indian Christians is the Christian Marriage Act of 1872. The conditions for certifications of a marriage of Indian Christian have been provided in Sec.60 of the Act. It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised of the state of Travancore–Cochin, Manipur and Jammu & Kashmir. It was the British administration that enacted the law. Three sets of authorities are provided for the solemnization of marriage; minister of

religion, marriage registrars and persons licensed to solemnize marriage. Registration of such a marriage is compulsory.²⁷

In India, Christian Marriage Act is comprehensive enough to deal with matters regarding solemnisation of marriage among Christians in India. But where one of the parties of marriage is a Christian and the other a non Christian the best course to adopt is to solemnise the marriage under the Special Marriage Act 1954. Marriage, according to Christian tradition, is not merely a civil contract nor is it purely a religious contract. It is seen as a contract according to the law of nature, antecedent to civil institutions and by itself an institution. Christian views on marriage typically regard marriage as instituted and ordained by God for the lifelong relationship between one man as husband and one woman as wife. Jesus, the founder of Christianity, underscored the importance and sacredness of lifelong marriage in his own teachings. He said that in marriage “the two will become one flesh”. Therefore what God has joined together, let no one separate.

CONDITIONS FOR MARRIAGE OF INDIAN CHRISTIAN

. The age of the man intending to be married shall not be under 21 and the woman intending to be married shall not be under 18.

. Neither of the persons intending to be married shall have a wife or husband still living

. In the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other;

“I call upon these persons here present to witness that I A: B in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C:D to be my lawful wedded wife or husband, or words to the like effect.

The common law tradition of monogamy, free consent, marriage age, and mental competence, prohibited degrees of consanguinity and licence to do it, were all incorporated in the Christian Marriage Act 1872.²⁸

PARSI MARRIAGE

The Parsi Marriage and Divorce Act 1936, governs all Parsi matrimonial relations in India, except those in the territories of Jammu & Kashmir. In order to fall under the purview of this act, both parties of the wedlock must be followers of Zoroastrianism. The Parsis in India are believed to be the descendent of Iranian Zoroastrians, who migrated to India during the 10th century AD. The Constitution of India allows the Parsis, as all others to practice their religion freely. Parsi Personal Law is also based on Hindu custom and the rules of English Common Law. In Zoroastrianism, marriage is considered as a spiritual discipline. Every marriage as well as divorce is required to be registered in accordance with the procedure prescribed in the Parsi Marriage and Divorce Act 1936. The Parsis wanted to update their matrimonial legislation to fit in with the present time accordingly, the Parsi marriage and Divorce (Amendment) Act 1988, was enacted. The registration of the Parsi Marriage is essential. It lays down that immediately on the solemnisation; the marriage should be certified by the officiating priest in the prescribed form. The certificate has to be signed by the priest, the parties to marriage, and by two witnesses present at the solemnisation of marriage.

Requisites to Validity of Parsi Marriage:

- . The contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in schedule I.
- . The Parsi Marriage is also regarded as a contract though the religious ceremony of Ashirvad is essential for its validity. The marriage is solemnized by a Parsi priest in the presence of two witnesses; In the case of any Parsi, who, if a male, has not completed twenty one year of age and if a female, has not completed eighteen years of age.²⁹

Certificate and registry of marriage:

According to Sec. 6 of the act, every marriage contracted under this Act shall, immediately on the solemnisation thereof, be certified shall be signed by the said priest.

Appointment of Registrar: Sec. 7 of the act states that for the purpose of this act a registrar shall be appointed within the local limits of the civil jurisdiction of High court.

Punishment of Bigamy – provided in Sec. 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

MARRIAGE UNDER JUDAISM:

Judaism is a comprehensive way of life, filled with rules and practices that affect every aspect of life. In Judaism marriage is viewed as a contractual bond by God in which a man and woman come together to create a relationship in which God is directly involved. A mutual consent of the parties is a must for contracting a valid marriage. In the absence of such consent, the marriage is void. The Jews in India practice monogamy.

In India there is no statutory law on marriage and divorce for the Jewish community. In Jewish law, marriage consists of two separate acts, called “Erusin” which is the betrothal ceremony, and “Nissuin or Chupah” is the actual ceremony for the marriage. After nissuin, the couple may live together.³⁰

CONJUGAL RIGHTS AND OBLIGATIONS –

Marriage obligations and rights in Judaism are ultimately based on those apparent in the Bible. In India there is no stationary law on marriage and divorce for the Jewish community. In sixteenth century MOSIC and TALMUDIC law was compiled and was styled as SHULCHAN ARUCH. Its third part was known as “Iben –Ha –Ezer” which contains the matrimonial law. This was the basis of Dr Mielziner for his work “Jewish law of marriage and divorce” This work is accepted as an accurate and authoritative account of the Jewish law.³¹

Marital harmony, known as “shlom bayit” is valued in Jewish tradition. The Talmud states that a man should love his wife as much as he love himself and honour her more than he honours himself, indeed, one who honours his wife was said, by the classical Rabbis, to be rewarded with wealth. The Talmud, condemned domestic abuse, as, it was said of a wife that God counts her tears .In Jewish marriage, husband enjoys a very strong position, and very few rights are given to the wife, related to

marriage and divorce. The rights of a husband and wife are described in tractate Kethuba in the Talmud, which explains how the rabbis balanced the two sets of rights of the wife and the husband. It is a written contract under which the wife would receive the specified sum from the husband's estate in case of his death or in case of her being divorced.

The history of the Kethuba is given by Dr. Mielziner in his book "Jewish law of Marriage and Divorce." Mielziner concluded "As the wife in our days, is sufficiently protected by the civil laws of the country, and in many cases also by special marriage settlements made in a more legal form, the Kethuba is generally regarded as an unnecessary, useless formality and is almost entirely dispensed with" Both the High Courts of Calcutta and Bombay observed that Kethuba no longer represented any real promise regarding payment of any sum of money, but was a mere formality and nothing more.

In Rabbinic times there were two distinct stages in the marriage ceremony (i) its ring ceremony or the Betrothal (ii) Nissuin or marriage. Marriage under Jewish law is essentially a private contractual agreement between a man and a woman. It does not require the presence of a Rabbi or any other religious official.

The Special marriage Act, 1954:

The Special marriage Act, 1954 provides a special form of marriage which can be taken advantage of by any person in India and by all Indian Nationals in foreign countries irrespective of the faith which either party to the marriage may profess. The parties may observe any ceremonies for the solemnisation of their marriage but certain formalities are before the marriage can be registered by the marriage officers. The Act also permits the persons who are already married under other forms of marriage to register their marriages under this Act.³²

Conditions relating to solemnization of special marriage:

- . neither party has a spouse living
- . though capable of giving a valid consent
- . the male has completed the age of twenty one and the female the age of eighteen years
- . the parties are not within the degree of prohibited relationship

. both parties are citizens of India

. Where the solemnised in the state of Jammu and Kashmir, both parties are citizens *of India domiciled in the territories* to which this act extends.

Place and form of solemnisation: Under Section 12 of the Act, the marriage may be solemnised at the office of the marriage officer or at such other place within a reasonable distance there from as the parties may desire.

Certificate of Marriage: Sec. 13 states that marriage officer shall enter a certificate in the Marriage certificate Book and such certificate shall be signed by the parties of the marriage and the three witnesses and it is the conclusive evidence of the fact that a marriage has been solemnised.

Gender Discrimination under Different Marriages Laws:

- **Gender Discrimination under Hindu Marriages:**

. Consent of girls is not very common and marriage is largely agreed between elders of the family /clan and considerations vary from class, caste, dowry, horoscope and other social parameters than suitability and compatibility;

. Child marriages in rural and tribal areas are still very common. One could marry at any age, there has being no lowest age of marriage. Remarriage is still a big problem and taboo;

. The marriage is considered sacred and therefore a lot of impetus is on sustaining it regardless of the condition of the women in her in-laws family;

. Suicidal death, dowry killings and female foeticide (despite a stringent anti dowry and female foeticide laws in our Country) are still very common;

. Inheritance and divorce are generally not easily available to common women because of the social stigma and lack of financial independence

. Hence the position of women, after marriage is not of equal partnership but that of a subservient or controlled party and much less than that of her husband.

. Registration of Hindu marriage has not yet been made compulsory, even when the State Government makes the registration of marriage compulsory, non registration does not render the marriage invalid.

- **Gender Discrimination in Muslim Marriages:-**

. Lack of education among Muslim women often leads to incompatible marriage;

. Though prescribed in Islam, the consent of women is rarely a serious consideration in a largely traditional and patriarchal society and cultural backdrop. Consent at marriage is treated more as a kind of ritual than exercising a choice;

. Non-payment of Mahr at the time of marriage and financial dependence of women often makes the women an unequal partner in the contract of marriage;

. Polygamy and its strict compliance as per Sharia is often a misused provision among men and is often the reason of serious marital discord.

- **Gender Discrimination under Christian Marriage Laws:-**

The Christian church prohibits divorce and does not permit the annulment of marriage for any reason as they are commanded by the church to spend their lives together however miserable their lives may be. Therefore, Christians have introduced the civil laws which permits divorce on slightest pretext.

- **Gender Discrimination in Parsi Marriages**

. Issues pertaining to marriages outside their religion and lack of clarity on the treatment of such association, their legal rights act remain largely an unresolved and un-reconciled issue

. Lack of clearly defined Personal Laws and established traditions is a cause of serious interpretational errors and subjectivity

. Lack of binding “Oversight” institution is resolving familial disputes are forcing the community to seek redress under other available civil options making the community less coherent and connected

- **Gender Discrimination under Jews Marriage Laws:-**

Judaism is a comprehensive way of life, filled with rules and practices that affect every aspect of life. In Judaism, marriage is viewed as a contractual bond commanded by God, in which husband is in a very strong position and very few rights are given to the wife in relation to marriage and divorce.

Having gained insights into the marriage laws of different religions in the context of traditions and modern laws and their bearing on society in general and women in particular, we can safely conclude the following:-

- . All religions, except Islam have or had a notion of divinity in marriages and as per their strict religious beliefs they are sacrosanct. However, the equality between men and woman in the marriages were seriously skewed in favour of men and offered little freedom by way of choice to the woman.

- . The traditional concept of divinity in marriages have not served the cause in most societies and have failed the test of time requiring civil legislations to manage the affairs of communities with varying degrees of gender equality and equity.

- . While the societies are evolving, the civil and social legislation of marriage laws would have to keep pace with the changes and will have to adopt itself continuously and the question of gender equality would be always put to test in all future legislations.

- . Bigamy is punishable by law in all communities but save the Muslims, who are governed by the Sharia law. Bigamous marriages are illegal among; Christian (Actxvof1872) ,Parsis (Actiiof1936) and Hindus, Buddhists, Sikhs and Jains (Actxxvof1955). Enactment of a uniform Civil Code would impinge upon Muslim rights to Polygamy.

- . In almost all recent cases where the need for a Uniform Civil Code has been emphasised women were at the receiving end of torture in the grab of religious immunity. Apart from the famous Shah Bano(1986) and Sarla Mudgal (1995) cases, there have been several other pleas by Hindu wives whose husband's converted to Islam only in order to get married again without divorcing the first wife.

We would therefore assume that the current laws of marriage in all religions except Islam can best be describes as "Work in Progress" and

in so far as the marriage customs of Muslims are concerned, the society will have to educate their women and accord the priority to women in matters of marriages as enshrined in the Sharia and fulfil the obligations in not just in letter but spirit.

Though the time, the rules of marriage have been set on unequal grounds. The women will abandon her name for another one, abandon her house to stay with a man, bear him kids, stay at home, help him gaining success, importance or whatever the hell he is after, live for him and not for herself, and dependent on him for everything. A relationship where one is dependent on the other is an unequal relationship, it gives more power to the one who is not dependent and so the marriage survives. It is the weakness that keeps it going not the strength.

Divorce:

Divorce is the termination of a marital Union. Divorce is a legal procedure whereby the married couple decides to separate and break all the vows that were taken during the sacred ceremony of a marriage. In India, divorce is still a taboo and is looked upon as a social stigma especially for women who take the step for divorce. The Divorce laws vary considerable around the world, but in most countries it requires the sanction of a court or other authority in a legal process. Divorce rates increased markedly during the twentieth century in developed countries, as social attitudes towards family and sex change dramatically. In modern days marriage is considered as a relation of consciousness. If they have differences, living together is a hell on earth. It cannot however, be denied that divorce is not a panacea for all matrimonial problems and should be resorted to only as an emergency exit from an unbearable situation as a lesser necessary evil.

On an all India level, the Special Marriage Act was passed in 1954, is an inter-religious marriage law permitting Indian nations to marry and divorce irrespective of their religion or faith. The Hindu Marriage Act, in 1955, which legally permitted divorce to Hindus and other communities who chose to marry under these Act. Various communities are governed by specific marital legislation, distinct to Hindu marriage Act, and consequently have their own divorce laws:

- . The Parsi Marriage and divorce Act, 1936
- . The Dissolution of Muslim Marriage act, 1939
- . Indian Divorce Act, 1869

Divorce under different Personal Laws:

Divorce under Hindu law:

Divorce was unknown to the laws of Dharma Shastra as marriage was regarded as indissoluble union of the husband and wife. A Hindu marriage is considered as a sacrament; one that is solemnized by the chanting of sacred mantras and the ceremony of the Saptapadi, which means taking seven steps together around the sacred fire. The concept of divorce is not a part of traditional Hindu perspective on marriage but nevertheless, divorce is attainable under current and older Hindu Laws. Hindu Divorce Act 1947, Madras Hindu Bigamy Prevention and Divorce Act 1949, and Saurashtra Hindu divorce Act, 1952. All these Acts now stand repealed by the Hindu Marriage Act, 1955.

Hindu Marriage Act, 1955:

“Divorce was introduced into Hindu Law for the protection of helpless women when they were ill treated. It was never Parliament’s intention to give husband matrimonial variety at their option so long as they could retain a pleader”.³³

The present act has introduced vital and dynamic changes in the Hindu law of marriage and divorce. It is laid down clear provisions for divorce under certain circumstances under sec.13 of the Act. Sec.14 renders the provision of divorce a bit difficult as it provides that no petition for divorce can be presented within one year of the marriage except when the case is of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent. Sec.15 lays down the limitations on the rights of divorced persons to marry again.

Marriage Laws Amendment Act, 1976

Marriage law amendment act, 1976 introduced changes in the law of divorce. The Breakdown theory of Divorce, in present scenario, became an impending need of the hour. It is meaningless to keep the parties tied up in marital relationship despite failure of marriage. The

law must give them freedom to wriggle out of such marriage and avail another opportunity of marriage.³⁴

Grounds for Divorce: - under Sec.13

- . Adultery
- . Cruelty
- . Desertion
- . Conversion
- . Unsoundness of mind
- . Leprosy
- . Venereal disease
- . Renunciation of world
- . Presumed death
- . Non-Resumption of cohabitation
- . Failure to comply with decree for restitution of conjugal rights

Additional Grounds to wife: Sec.13 (2)

The section has further laid down additional grounds available to wife for the dissolution of marriage by a decree of divorce on the grounds of Bigamy, Rape, Sodomy, Non-resumption of cohabitation for one year or upwards after the passing of maintenance order under section 18 of the Hindu Adoptions and Maintenance Act, 1955 or under section 125 of the code of criminal procedure.

Divorce by Mutual Consent:

Under Sec. 13 (B) of ' The Hindu Marriage Act, 1955'

The provision relating to divorce by mutual consent has been added to the Marriage Laws (amendment) Act, 1976. It provides for divorce by Mutual Consent of both the parties to the marriage.

DIVORCE UNDER ISLAMIC LAW:

It is a unique aspect of Muslim law that husband has the unilateral power of pronouncing divorce on his wife without assigning any reason, without any cause, literally at his whim, even in a jest, or in a state of intoxication, and without recourse to the court or any other judicial, administrative or familial authority, when no one is present (though Shia law requires two witness), and even in her absence, by just uttering the formula of Talak. What is sad is that it has survived in

modern India where we proclaim equality of sexes and enjoin the states to make special provisions for ameliorating the lot of women.

There is a saying by Prophet Mohammed (PBUH),

“Of the many things which God has made permissible for man, the most displeasing to God is divorce”.³⁵

Quran says “O prophet, when men divorce women, put away of their (legal) period and reckon the period and keep your duty to Allah, your lord (Quran 65:1-3). This Qura’nic verses states that if a woman is to be divorced, she should be divorced in kindness and not in anger and in feeling of hurt. According to Islam, marriage is considered a civil contract. For avoiding the civil consequences of unhappy marriage, divorce is permitted. The holy Quran explicitly says “*either retain them with humanity or dismiss them with kindness*”.³⁶ According to Ameer Ali;) “The Prophet restrained the power of divorce possessed by husband and gave to the women the right of obtaining separation on reasonable ground and towards the end of his life, he went so far as to practically forbid its exercise by man without the intervention of arbiters or judge. He pronounced talaq to be the most detestable of all permitted things before the Almighty God, for it prevented conjugal happiness and procreation of children. The permission, therefore, in the Quran, though it gave a certain countenance to the old customs, has to be read in the light of law gives own words when it is borne in mind how ultimately law and religion are interwoven in the Islamic system; It will be easy to understand the bearing of words on the institution of divorce.

The right to divorce (talaq) enjoyed by husband in Muslim law, had come under much hammering and criticism in the Shah Bano case. Under the Muslim law, matrimonial union is a civil contract and can be terminated like other contracts by mutual agreement of the parties, but man, in shariat, has some superiority over women to divorce her under certain formalities even against her will. The women cannot divorce her husband of her own accord and against his will unless she obtained this power by contract with him before marriage or after marriage. She can, for certain reasons, obtain judicial divorce without foregoing her

dower or her right to inheritance and maintenance for some specified period under the dissolution of Muslim Marriage Act, 1939, which applies to all Muslim women. She can, by means of khula induce her husband to free her of the marriage tie.

There are three main modes of Talaq :-

- . Talaq- e - ahsan i.e. a single pronouncement of divorce during a “tuhr”
- . Talaq-e-hasan i.e. three pronouncements made during successive tuhrs
- . Talaq- e- bidat i.e. three pronouncement made during a single tuhr either in one sentences or in separate sentence thrice or a single pronouncement made during a tuhr indicating the intention to irrevocable dissolve the marriage.

The first two modes of talaq namely talaq-e-ahsan and talaq-hasan gives an opportunity to the husband to reconsider his decision for divorce. In both these cases, divorce becomes absolute after a certain period has elapsed. Talaq-e-bidat or Triple divorce in one sitting was prohibited during Prophet Mohammed’s life time. Divorce given through triple talaq is nothing but sinful form of divorce and has been condemned by the Prophet himself but unfortunately some Muslim men follow this form of divorce.

Judicial Divorce of Muslim women through The Dissolution of Muslim Marriage Act, 1939: The Dissolution of Muslim Marriage Act, 1939 affords protection of Muslim married woman from the rigidity of the textual personal law of Muslims.³⁸ The wife right of divorce, which was denied to her, was restored to her under this Act on certain grounds specified in it. This Act extends to the whole of India except the State of Jammu and Kashmir. It is considered a landmark achievement in respect of matrimonial relief to a Muslim wife.

Grounds for decree for dissolution of marriage (Sec.2):

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely;

. that where about of the husband have not been known for a period of four years.

. that the husband has neglected or has failed to provide for her maintenance for a period of two years

. that the husband has been sentenced to imprisonment for a period of seven years or upwards

. husband was impotent at the time of marriage and continues to be so

. Suffering from venereal disease

. Cruelty

Under Sec.5 of the Act nothing shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

WOMEN RIGHTS IN DIVORCE:

. If the marriage was consummated, wife may marry another person after the completion of iddat, if the marriage was not consummated; she is free to marry immediately.

. If the marriage was consummated, the wife entitled to immediate payment of the whole of the unpaid dower, both prompt and deferred. If the marriage was not consummated, and the amount of dower was specified in the contract, she is entitled to half that amount. If the marriage was consummated, the wife entitled to immediate payment of the whole of the unpaid dower, both prompt and deferred. If the marriage was not consummated, and the amount of dower was specified in the contract, she is entitled to half that amount.

. The divorced wife is entitled to maintenance and lodging till her period of iddat expires.

. Khula and Mubarat are two forms of divorce by mutual consent. Khula means redemption and Mubarat means mutual separation, are two forms of divorces by the wife with the consent of her husband.³⁹ The Muslim Personal Law (Shariat) Application Act 1937 also recognized the rights of the wife to obtain divorce on two other grounds, i.e. (i) Ila (& (ii) Zihar.

The divorced wife is entitled to get maintenance from her former husband till she observes iddat which varies to different period in different cases as has already been stated previously.

It is evident that there is no provision for the maintenance of a divorced wife in Muslim law after the period of iddat or the period after delivery and suckling of the child.

CHRISTIAN LAW OF DIVORCE IN INDIA

Whitely Stokes who framed the bill on Indian divorce Act, and Sir Henry Maine originally introduced the bill on the 24th December 1862. The Bill, after remaining for seven years before the council of the Governor General, received the assent of the Governor General, on 26th February 1869. This law has been substantially amended in 2001.⁴⁰ The Indian Divorce Act deals with divorce among Christian. Roman Catholics do not come under the purview of any divorce proceeding since the Roman Catholic church has not recognise divorce. The Divorce Act also does not contain any provision for divorce by mutual consent.

Maintenance: During the period when the divorce case is in the court, the husband has to give one fifth of his salary for the maintenance of his wife. Custody of the child has to be decided by the court after going into the details of each individual case.

The dissolution of Marriage and Judicial separation (under the Indian Divorce Act, 1869) allows a Christian wife to file petition for a divorce either in High court or District court on the grounds:⁴¹

- . That her husband has exchanged his profession of Christianity and gone through a form of marriage with another woman
- . Has been guilty of incestuous adultery
- . Has been guilty of bigamy and adultery
- . Has been guilty of rape, sodomy or bestiality
- . Is guilty of adultery coupled with desertion without reasonable excuse for two years or more.

Section 7 of the Act specifically provides for the application of the principles and rules on which the court for divorce and matrimonial causes in England acts and gives relief.

Since 1869, the Indian Divorce Act did not undergo any major changes and thus Christian law of divorce in India remained embedded on the principles of Victorian vintage for more than a century and a quarter.

Indian Divorce Amendment Act, 2001

The Government of India declared the year of 2001 as the year of Women empowerment and aptly so, in the context of three important bills placed before the parliament dealing with rights of women. The Indian Divorce Amendment Act 2001, which was an endeavour to bring about gender justice among the Christian community in India in matters of divorce and matrimonial causes. The procedural aspect under the act of 1869 has been substantially altered to reduce the miseries of parties in divorce proceeding. Now a family court can grant a decree of nullity of marriage or divorce at the first instance and the same would final if no appeal is preferred within the period prescribes for the same. In addition, with the enactment of the marriage laws (Amendment) Act 2001, the provision for alimony has been made more beneficial to women; the quantum of alimony is left to be decided by the court in the circumstance of each case. Gender discrimination writ large on various provisions in the act has been amended and gender equality has been made almost a certainty.

Dissolution of Marriage by Mutual Consent: Under Sec. 10-A of the Divorce Act, 1869

According to The Indian Divorce (Amendment) act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.⁴²

DIVORCE UNDER PARSI LAW:

The Parsi Marriage and Divorce Act 1955, governs divorce proceeding for Parsis in India. As per this act, if consummation of marriage is imposable because of natural cause, such marriage can be declared null and void at the instance of either party.

Parsi marriage and divorce (Amendment) Act 1988 provide the provision of divorce by mutual consent.⁴³ The Parsi women can claim

maintenance from her spouse through criminal proceeding or /and civil proceeding.

Parsi marriage and divorce act, section 32 (A) ,enact the provision that either party to the marriage may present a petition for dissolution of marriage by a decree of divorce on the ground:⁴⁴

- . That there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upward after the passage of a decree for judicial separation in a proceeding to which they were parties, or

- . That there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upward after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

- . Cruelty
- . Insanity
- . Leprosy
- . Venereal Diseases
- . Conversion and Apostasy
- . Presumption of Death
- . Seven Year Imprisonment
- . Renunciation of World

- . **Wife's Fault Grounds of Divorce:**

- . Rape, Sodomy and Bestiality

Under most of the Indian personal laws, there is a period of wait after a decree dissolving the marriage is passed, before the expiry of which spouses are not free to remarry. The provision is identical in the Hindu marriage Act, Special Marriage Act and the Parsi Marriage and Divorce Act.

DIVORCE UNDER JUDAISM:

Judaism recognised the concept of “no fault” divorce thousands of years ago. Jewish law permit divorce as an unfortunate necessity.

Judaism generally maintains that it is better for a couple to divorce than to remain together in a state of constant bitterness and strife. In Biblical law, a husband has the right to divorce his wife but a wife cannot initiate a divorce.

According to the Torah, divorce is accomplished simply by writing a bill of divorce, handing it to the wife and sending her away. The document is more commonly known today as a Get. A civil divorce is not sufficient to dissolve a Jewish marriage. As far as Jewish law is concerned a couple remains married until the woman receives the Get. According to Jewish Law, a marriage is not dissolved until a bill of divorce, get, is exchanged between husband and wife. Proper witness must be present at the time of the writing of the document and its delivery.⁴⁵

The Jewish law provides that the court should not interfere where both parties declare that their marriage has failed and they would like to dissolve their marriage.

Divorce of Women through the Special marriage Act, 1954

Divorce Provision is available for women under The Special Marriage Act, 1954. As per Sec. 27 of the Act, a petition for divorce may be presented to the District Court either by the husband, or the wife on the ground that the respondent⁴⁶

- . has, after the solemnisation of the marriage, been guilty of Rape, sodomy, or bestiality;

- . that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973 or under the corresponding Section 488 of the Code of Criminal Procedure, 1898, a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upward.

- . Subject to the provisions of this act and to the rules made there under, either party to a marriage, whether solemnised before or after the commencement of the Special Marriage (Amendment) Act, 1970, may present a petition for divorce to the District Court on the ground-

. that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upward after the passing of a decree for judicial separation in a proceeding to which they were parties; or

. that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

Gender Discrimination under Divorce Laws:

Gender Discrimination and Social ills in Hindu Divorce;

According to Hinduism marriage is a sacred relationship, a divine covenant, and a sacrament. Therefore, it cannot be dissolved on any personal grounds. Divorce is still a social stigma especially for women who take the step for divorce. Many a times, Hindu women in India ready to compromise in their marital life rather than opting divorce. Many a times, divorce in Hindu communities is looked upon as an empowerment to women to come out of the domestic abuse. The payment of Alimony in Hindu Divorce cases has time and again criticized on the grounds of inherent flaws in the making, if rules related to Alimony by the law drafters. The attitude of ancient Hinduism towards women was rather ambiguous. The contradiction between religion and reality is very vivid in the life of any women. While religious ideology and philosophy have put her on a pedestal, the man in the society has pulled her down from it and given her a very subservient and slavish role. Manu does not approve of dissolution of marriage in any condition. He declared 'let mutual fidelity continue till death' this in brief may be understood to be the highest dharma of husband and wife.

Gender Discrimination and Social ills in Muslim Divorce:

Islam does recognize the right of both partners to end their matrimonial relationship. Islam, grants the wife the right to dissolve the marriage through "Khula", if the husband dissolves the marriage by divorcing his wife, he cannot retrieve any of the marriage gift he has given her, in the

case of the wife choosing to end the marriage she may return the marriage gifts to her husband.

The divorced wife is entitled to get maintenance from her former husband till she observes iddat. The question now arises as to who will maintain her if she has no supporter and is of old age. A leading case, which kicked up a fierce controversy not only among the legal luminaries but among the people belonging to all walks of life and professing different religions, is that of Mohammed Ahmed Khan Vs Shah Bano. Such cases should be looked at from a humanitarian point of view and such divorced wives, especially old should be treated as destitute women.

Muslim women lay behind in education, hence they mostly ignorant of their rights, they neither know their rights under the shariat law nor the rights confessed by the constitution of India. A vast majority of women were ignorant of neither Muslim women rights of divorce act 1986, nor they anything about section 125 of Cr.P.C.

Consent a marriage was more a kind of ritual than exercising a choice. She does not even have the right to reject the partner of her parent's choice.

Gender Discrimination & Social ills in Christian Divorce

Section 10, 17 and 20 of the Indian divorce act, 1869 are most antiquated and discriminatory contrary to the provisions of the constitution. Section 10 of the Act provides for the grounds on which spouses belonging to Christian community can file a suit for dissolution of marriage. In accordance with the provisions contained in the section, the male spouse is entitled to dissolution of marriage on the grounds of adultery on the part of female spouse but the female spouse is not so entitled unless some other matrimonial fault to be superadded to the adultery.

Section 39 provides that in case the wife has an allegation of adultery against her, she loses her property in favour of the husband or children. There is no corresponding provision that the husband would lose it. This is again gender discrimination.

Section 36 provided that an amount not exceeding one-fifth of the property is to be given to the divorced woman as a maintenance this is

ridiculous in the present day context when soar towards the sky with each passing day.

. Christians follow one of three churches, namely the catholic, orthodox, or the Protestant church. The Catholic church Prohibits divorce and does not permit annulment of marriage for any reason, neither of them can marry again, since they would be committing the crime of bigamy. Christian community wanted Church courts as parallel courts to be empowered in relation to grant of dissolution of marriage. The civil courts can call for the records of the church courts when parties approach them and verify them and decide on the merits of the case.

. The Christian Churches that permit divorce in the event of adultery “What therefore God hath joined together let no man put asunder”. [4] They are commanded by the church to spend the rest of their lives together, however miserable their life may be. Since the laws of the church declare to the bride and bridegroom that they marry in order to be happy, they have entered a prison, the door of which is locked and they will never be allowed to leave the prison even if they catch each other with the weapons of enmity and hatred. Christians have introduced civil laws which permit divorce and thus deliver them from having to resort to murder or suicide in order to liberate them from this prison. It was therefore quite an ordinary occurrence in these states for a woman to be married in the morning and to be divorced in the evening.

Gender Discrimination & Social ills in Parsi Divorce

When the more educated Persians readily began to accept divorce, problem arose for divorced Zoroastrian women, who often received little or no financial support from their ex-husbands. They were expected to live on their Mahriyas (bridal money payable on demand, especially in the case of divorce) despite the fact that the formal Mahr, as specified in the Rivayats, is no longer contracted.

Gender Discrimination & Social ills in Jewish Divorce

In Judaism marriage is viewed as a contractual bond commanded by God in which a man and a woman come together to create a

relationship in which God is directly involved. Judaism, on the other hand, allows divorce even without any cause. The Old Testament gave the husband the right to divorce his wife even if he just dislikes her. The Old Testament not only gives the husband the right to divorce his “displeasing wife” it considers divorcing a bad wife an obligation.

The Talmud has also made it mandatory to divorce a barren wife (who bore no children in a period of ten years) .Wives, on the other hand, cannot initiate divorce under Jewish law. Very few grounds are provided for the wife to make a claim for a divorce. The court might support the wife claim to a divorce, it cannot dissolve the marriage. Only the husband can dissolve it, by giving his wife a bail of divorce. If the husband is stubborn enough, he can refuse to grant his wife a divorce and keep her tied to him indefinitely. He can marry another woman, but she can't do so, since she is still legally married. According to Halacha the woman is still tied to her former husband. The Hebrew term is Aguna which literally means chained.

The only civil remedy available is through the Divorce (Religious marriages) Act 2002 which was specifically passed to assist Jewish spouses to obtain a Get where one of them was not co-operating. The Act came into force in February 2003 and has been successfully implemented. A person can apply for an order that a decree of divorce is not to be made Absolute until both parties have produced to the court a declaration that they have taken as are required to dissolve the marriage in accordance with those usages. According to the Torah, divorce is accomplished simply by writing a bill of divorce, handing it to the wife and sending her away. The document is more commonly known today as a Get. A civil divorce is not sufficient to dissolve a Jewish marriage. As far as Jewish law is concerned a couple remains married until the woman receives the Get. According to Jewish Law, a marriage is not dissolved until a bill of divorce, get, is exchanged between husband and wife. Proper witness must be present at the time of the writing of the document and its delivery.

The Jewish law provides that the court should not interfere where both parties declare that their marriage has failed and they would like to dissolve their marriage.

A single codified law does not define the Personal law in India. We have the Hindu, Muslim, Christian, Jewish, Parsis laws. There are various matrimonial statutes laying down the provisions for each of these laws. Even the institution of divorce has different implications under these laws. While it is only under the Hindu marriage Act 1955, The Special Marriage Act, 1954 and Parsi Marriage & Divorce Act 1936, that divorce by mutual consent and on the basis of irretrievable breakdown of marriage is recognised. Muslim law provides the husband with the rights of unilateral divorce while the wife can only rely on certain prescribed faults grounds.

Faults grounds as the basis for divorce are given in all the Indian matrimonial statutes. Certain faults grounds that is common to most of the personal laws, such as adultery, desertion, insanity, cruelty etc; and amongst those specifically available to women, rape, sodomy and bestiality. There are number of provisions that are quite similar between the various statues and the kinds of problems that arise before courts, when it comes to implementation of such rules.

The thrice-uttered talaq has been much dramatised by Hindu Filmdom and Muslim-bashers alike, but leaders of the minority community point out that it is not all that simple under Qura'nic principles. Between each utterance of talaq there has to be an interim period to encourage reconciliation and the divorce is binding only after such attempt has failed. But a number of cases have been filed in courts where wives have alleged that this was not done.

Muslim women would benefit if divorce laws were made universal. Apart from the act of divorce, a change in law would also force Indian Muslim men to pay alimony to their former wives. The Muslim Women's Act of 1986, brought to overturn the Supreme Court ruling in the Shah Bano case would then be superseded. When a 65-year-old Muslim woman fought a lonely battle for maintenance, it took almost a decade and the highest court of the country to award her right to 180 rupees a month as alimony.

Despite the amendment, the divorce law still remains unclear on the fate of the children and doesn't define who and to what extent takes the responsibility of their upbringing. In one section of the amendment to the Hindu Marriage Act 1955, there just one clause that says in no

definite terms that divorce will not be granted by the court if it is not sure of how the children will be cared for.

Maintenance:

The term 'Maintenance' has been used in a wide sense. The right of women regarding the personal law of marriage, divorce and maintenance differ on the basis of religious laws. Right to maintenance forms a part of the Personal Law. Under the Code of Criminal Procedure, 1973 (2 of 1974), right to maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Maintenance can be claimed under respective Personal laws of people following different faith and proceeding. Proceedings initiated under Sec. 125 however, are criminal proceeding and, unlike the personal laws are of a summary nature and apply to everyone regardless of caste, creed or religion.⁴⁷ Even before the case of divorce is filed, Indian law provides the right to claim maintenance through the medium of the court.

Maintenance under Different Personal Laws:

Maintenance under Hindu law:

Sec. 24. Of The Hindu Marriage Act deals with the interim maintenance and also expenses during the matrimonial proceedings. This section also makes mandatory provision that such application shall, as far as passable, be disposed of within 60 days from the date of service of notice on the wife or husband, as the case may be. The said limit has been inserted by the Marriage Laws (Amendment) Act, 2001.⁴⁸

Hindu Adoption and Maintenance Act, 1956 defines maintenance as "provision for food, clothing, residence, education and medical attendance and treatment". In the case of an unmarried daughter it includes reasonable expenses of her marriage.

Under Hindu Law: the wife has an absolute right to claim maintenance from her husband. Under Hindu law, a person has personal obligation

to maintain his wife, children, and aged parents. In Hindu Law there are two statutes which provide for maintenance;

- . The Hindu Marriage act, 1955 (Sec.24)
- . The Hindu Adoption and Maintenance Act, 1956 (Sec.25)
- . Criminal Procedure Court (Sec125)
- . Protection of Women from Domestic Violence (Sec.20)

Maintenance includes:

- . In all cases, provision for food, clothing, residence, education and medical attendance and treatment
- . In the case of an unmarried daughter also the reasonable expenses of an incident of her marriage
- . Minor, means a person who has not completed his or her age eighteen years

Nature and Extent of the right of Maintenance under the Hindu adoption and Maintenance Act, 1956

Maintenance of Wife:

Under Section 18 of the Hindu Adoptions and Maintenance Act, two separate rights have been conferred on the wife:

- . Maintenance
- . Separate Residence

The right of the wife to claim maintenance from her husband is her personal right against her husband and it arises irrespective of the fact whether the husband has got any property either ancestral or self acquired. The expression 'Desertion' and 'Cruelty' are justifications for separate residence of the wife. Maintenance is to be effective from date of application and not from the date of order granting maintenance was passed.

According to the Hindu Adoptions and Maintenance Act, 1956 there is only two grounds when the wife does not remain entitled to separate residence and maintenance,⁴⁹

- . When wives becomes convert, and
 - . When she became unchaste
- . Daughter to claim maintenance whether legitimate or illegitimate; both can claim maintenance from their parents. Daughters can claim

maintenance from her parents as long as she is unmarried. There is no obligation on the parent to maintain a married daughter but on becoming a widow, the obligations are revived

. **Mother right to maintenance:** A mother has a right to claim maintenance from her son.

Maintenance of widowed daughter- in- law: As per **Sec. 19 of the Hindu Adoption and Maintenance Act, 1956**, a Hindu wife shall be entitled to be maintained after the death of her husband by her father-in-law. However, she is eligible for maintenance if she is unable to maintain herself.

Alteration of the amount of maintenance: Section 25, Hindu Adoption and Maintenance Act, 1956, lays down that the amount of maintenance, whether fixed by the decree of court or by agreement, may be altered subsequently if a change of circumstances justifying such alteration is shown.

Amount of maintenance under section 125 can be allowed only at a monthly rate and an annual allowance cannot be granted.

Maintenance under Muslim Law;

The personal law statutes governing a Muslim woman's right to maintenance are the Dissolution of Muslim Marriage act, 1939, and the Muslim women (protection of right on Divorce) Act, 1986.⁵⁰

The Muslim law of Maintenance differs from the law of maintenance in most other systems of law, except wife, in most of the cases the obligation of a Muslim to maintain another arise only if the claimant has no means or property out of which he or she can maintain herself or himself.

Under the Muslim law, this is the duty of the husband to maintain his wife, irrespective of her debt against the husband and has priority over the right of all other persons to receive maintenance. Maintenance is called Nafqah, it includes food, raiment, and lodging and other essential requirements for livelihood.

Divorced wife right to maintenance:

. Reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband

- . A Muslim has a personal obligation to maintain his children but it is not an absolute obligation
- . A father is bound to maintain his female children until they are married
- . A Muslim widow has no right to maintenance out of her husband's estate in addition to what she got by inheritance as his wife.

In 1986, The Muslim women (Protection of right on divorce) Act was passed. The Act has consolidated and harmonized the different schools of the Muslim law in the matter of payment of maintenance to the wife on divorce. The preamble of the Act spells out the objectives of the act as 'the protection of the right of Muslim women who have been divorced by, or have obtained divorce from, their husband'. Sec. 3 of the Act speaks of 'provision and maintenance' while Sec. 4 talks only of maintenance. This means that at the time of giving divorce the Muslim husband is required to visualize the extent of the future needs of the wife and make it preparatory arrangements in advance for meeting the same. According to the Sec. 3 of the Act, Mahr or other properties of Muslim women has to be given to her at the time of divorce. While the orthodox view of the husband's liability to pay maintenance only upto Iddat period finds prominence in this act, the modern trend as reflected in section 125 of the Cr.P.C has also been included making it optional on the choice of both parties

Maintenance from other Relations and Wakf Board:

Sec.4, lays down a divorced woman is entitled to file an application for maintenance from her relatives or Wakf Board, if she is not in a position to maintain herself and from her husband. For the application of Sec. 4, following two requirements should be satisfied:⁵¹

- . she is not able to maintain after the iddat period, and
- . she has not re-married.

It appears that Parliament wanted to codify and clarify the Personal law of Muslims, and accord protection to divorced women so that there may not be controversy over it in future.⁵²

Maintenance under Christen Law:

The Indian Christian have no Personal law and their domestic obligations have to be governed by the English law and under that law a wife has no common law right to suing her husband for maintenance.

Regarding the common law scheme of property which lasted up to 1870; “It is substantially true to say that marriage transferred the property of the wife to her husband”.

The Indian Divorce Act, 1869 recognises the right of only wife to maintenance – both alimony pendent lite and permanent alimony, amended in 2001 under section 36. However the husband doesn't have the same rights under the said act, it can be claimed only by the wife.⁵³

Permanent alimony can be granted only in case of dissolution of a marriage or judicial separation: As per Sec.37 of the Act.

The District Court may 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 own fortune, to the ability of the husband and so the conduct of the parties.

Power to order monthly or weekly payments:

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.⁵⁴

Sec.38 Court may direct payment of alimony to wife or to her trustees.

The Christian have no personal law providing for maintenance for the parents like Hindu and Muslim law. Parents who seek maintenance have to apply under provisions of Cr.P.C.

Under Indian Divorce Act, 1869(Sec. 41-44), the parents are entitled to provide maintenance for minor children.

The Act talks about the ability of non-claimant but not about the income and property of non-claimant.

Maintenance under Parsi law:

Under the Special Marriage Act and Parsi Marriage and dissolution Act, the needy spouse, husband or wife can apply for interim maintenance while under the Indian Divorce Act only wife can apply for interim maintenance. The Parsi Marriage and Divorce Act, 1936 provide for maintenance Pendent lite and for permanent alimony and maintenance.

Parsi law was updated through an amendment in 1988 bringing it almost on a par with the Special Marriage Act, 1954. After the Amendment the provision has been brought at par with the Hindu Marriage Act, 1955 and now even a husband can seek maintenance. The relevant sections provide as follows:⁵⁵

Sec. 39 Alimony Pendente Lite:- In any suit under this Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the court, on the application of the wife, may order the husband to pay her monthly or weekly during the independent suit such sum not exceeding one fifth of her husband's net income as the court, considering the circumstances of the parties, shall think reasonable.

Sec. 40 Permanent Alimony and Maintenance:- Make such monthly payments to the wife for her maintenance and support as the court may think. Where an order for alimony or maintenance in favour of a wife has been made either under the provisions of the Parsi Marriage and Divorce Act, 1865, or under the provisions of this act, the court, if satisfied that the wife has re-married or has not remained chaste, or if such party is the husband, that he had sexual relation 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.

Sec. 41. Payment of alimony to wife or to her trustee:- In all cases in which the court shall make 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 or to a guardian appointed by the court.

Maintenance under Jewish Law:-

Under **Halacha**, there is no requirement for the husband to make financial provision for the wife's at all and so for the Beth Din to decide wife's financial award she may not receive a fair settlement. The civil court differ hugely is in the question of finance. When dividing the assets, the civil court has a number of factors to take into account including the welfare of the children, the length of the marriage, and the

needs of the parties. Jewish law requires a husband to maintain his wife at minimal levels and does not obligate him to pay for her support if she works and keeps her earnings for herself, or if they are living apart. Since Jewish law does not require a husband to support his wife after their divorce (there is no alimony under Jewish law), such agreements give a husband a financial incentive to divorce his wife.

Under Halacha there is an obligation for man to fully support his children. It is therefore the responsibility of the man to ensure that the children are fed and clothed. Mothers are no obligation to financially support and maintain their children.⁵⁶

Maintenance under the Code of Criminal Procedure, 1973(CrPC)

According to the Supreme Court Sec.125, of the code of criminal procedure, 1973 is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) and reinforced by Article 39.⁵⁷ The object of the provision being to prevent vagrancy and destitution, it has to be found out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family.

Section-125 order for Maintenance of wives, children and parents;

The Personal law irrespective of religious denominations contain provisions with regard to maintenance of women, children and parents. In 1898 attempts were made to secularise the concept and make it statutory right thus, Section 488 was incorporated in the Criminal Procedure Code of 1898. This is a secular law applicable to all irrespective of caste, religion or community. The child is entitled to claim maintenance under the code independently of any matrimonial litigation between the parents. After the amendment of 2001, the ceiling of Rs. 500 has been done away with, beside, explicit provision for interim relief has also been incorporated.

Inheritance and Succession Rights in Different Personal laws:

In any family or society the most important and often discordant issue arise from the right to inheritance and succession. Be it political,

financial or even religious capital. The question and settlement of inheritance & succession have been a serious issue from times immemorial and history is full of incidents when the absence of a fair and just settlement of these rights have led to immense destruction and violence.

Therefore, it was only natural to have laws and principles of inheritance & succession in the family laws also and we will try to explore some of them in the context of the subject focussing mainly on rights of women in the Laws of Inheritance & Succession. Religion plays a major role in the succession of property by women as the personal laws of religious communities are mostly dominated by the scriptures of those religions. The succession laws, codified separately to different religions, neglected the women and gave an unequal status to them. Thus, in India, the succession to property is based on religion of Hindus, Muslims, Christians, parsis, according to The Hindu Succession Act, 1956, The Indian Succession Act, 1925, and The Personal Law of Muslims.

Inheritance and Succession rights under Hindu Law:

The Hindu Succession Act, 1956 marks a new era in the history of social legislation in India. This Act has been passed to meet the needs of a progressive society.

STRIDHAN – The word Stridhan is derived from Stri (woman) and dhana (property). The concept of stridhan is as old as the Rigveda. The principal definition contained in Manusmriti is “what was given before the nuptial fire (adhyagni), what was given at the bridal procession (adhyavanamika), what was given in token of love (dattam pritikarmain) and what was received from a brother, a mother or a father are considered as the six fold property of a women”.⁵⁸ The Hindu Succession Act, 1956 does not permit to abolish custom in the abstract. Sec. 14, The absolute property belonging to a women was called Stridhana.⁵⁸

According to Apasthamba “the share of the wife consists of her ornaments and wealth which she might have received from her relations”. The references of Rigveda indicate that the woman did hold separate property and had dominion over it. In marriage hymns of the

Atharva veda, evidence of giving dowry to bride by brothers or parents is also clear. The Hindu woman of Vedic society did hold her property independently and effectively. Further, she had a right to dispose it off according to her own choice.

A Hindu woman, whether a maiden, a wife or a widow has never been denied the use of her property. Even in Manusmriti one can see that right to hold property had been respected. Since ancient times Stridhana was treated as women's property. There are two systems of inheritance among the Hindus in India, namely, the "Mitakshara System" and the "Dayabhag System". The Mitakshara System prevails in whole of India except in Bengal and its adjoining parts, whereas the Dayabhag System prevails across the country. According to Mitakshara, the preferential right to inherit is determined by family relationship, while in the Dayabhag it is determined by the capacity of a person to perform funeral rites.

Hindu Law of Inheritance Act 1929

This was the earliest piece of legislation bringing woman into the scheme of inheritance. This Act conferred inheritance rights of three female heirs; son's daughter, daughter's daughter and sister.

The Hindu Women Right to Property Act 1937

The Hindu Woman Right to Property Act 1937 was hailed as opening of a fresh chapter in the history of woman's right to property. This was the landmark piece of legislation conferring ownership rights of women. The act introduced important changes in the law of succession. This act brought about revolutionary changes in the Hindu law of all schools and brought changes not only in the law of 'Coparceners' but also in the law of partition, alienation of property, inheritance and adoption. The act conferred new rights to widows without the right to enforce partition, in the property.

. In case of separate property, the widow along with sons are entitled to equal share with that of the son, but the widow did not become a coparcener.

. A daughter had virtually no inheritance rights.

After passing of the Hindu Women's Rights to Property Act 1937, this legislative reform was brought out by the British to improve the status of widow. She no longer had to depend on the husband's family for her inheritance. It was found that the 1937 Act was inadequate to protect the interest of Hindu women and a committee was appointed to prepare a comprehensive Hindu Code. The government had set up Rau Committee to suggest reforms also on this aspect of law. On the basis of the suggestion and recommendations of the Rau Committee several legislations were adopted and the most outstanding of which is Hindu Succession Act 1956, which represented the biggest reformative outlook of modern Indian society. The Hindu Succession Act 1956 has been passed to meet the needs of a progressive society.

Inheritance and Succession Rights of Hindu Women:

The Hindu Succession Act 1956 came into force on June 17, 1956. Section 14 c (i) of the act states as follows; "Any property possessed by a female Hindu, whether acquired before or after the commencement of this act, shall be held by her as full owner thereof and not as a limited owner". The limited interest of Hindu female is converted into absolute rights. The Hindu Succession Act, 1956 bases its rule of succession on the principle of propinquity, i.e. preference of heirs on the basis of proximity of relationship.⁵⁹

It applies to all the Hindus including Buddhists, Jains, and Sikhs. It lays down a uniform and comprehensive system of inheritance and applies to those governed both by Mitakshara and the Dayabahaga schools of Hindu Law. Despite the passage of The Succession Act 1956, which gave women equal inheritance rights with men, the "Mitakshara Coparcenary" system was retained and the government refused to abolish the system of joint family. According to this system, in the case of a joint family, the daughter gets a smaller share than the son. While dividing the father's property between the wife, son and daughter, the share is equal.

The aim was to end gender discrimination in Mitakshara Coparcenary by including daughter in the system. No female is a member of the Coparcenary in Mitakshara law. The female were allowed to stand on the same podium and to be recognised on equal footing. The Hindu woman could not suppress her feeling anymore and she was

responsible to give a new beginning to her subdued feelings. She now wanted property and its enjoyment as full owner at par with men because whatever she enjoyed before 1956 was short of absolute ownership in property. The Hindu succession act reformed the Hindu personal law and gave a woman greater property rights, allowing her full ownership instead of limited rights in the property she inherited under section 14 with a fresh stock of heirs under section 15 and 16 of the act.

THE HINDU SUCCESSION (AMENDMENT) ACT 2005

This is a landmark. After 50 years, the government finally addressed some persisting gender inequalities in the 1956 Hindu Succession Act (1956 HSA), which itself was path breaking. The 2005 Act covers inequalities on several fronts; agricultural land, Mitakshara joint family property, parental dwelling house, and certain widow's rights. Another notable achievement of the 2005 Act (Sec.23) is the inclusion of all daughters especially married daughters as coparceners in the Joint family property.

The Hindu Succession (Amendment) Act 2005 sought to make two major amendments in the Hindu Succession Act 1956. First, it proposed to remove the gender discrimination in section 6 of the original act. Second, it proposed to omit section 23 of the original act, which disentitles a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family until the male heir chooses to divide their respective shares therein. The omission of section 4(2) of The Hindu Succession Act 1956 is another achievement of the 2005 amendment Act. Now woman also has inheritance rights over agricultural lands just as men.⁶⁰

The Hindu Succession Act is a pioneer legislation in respect of property right of a woman amongst Hindus. By incorporating section 14 in the Act the narrower and restrictive connotations of the term 'stridhan' have been replaced by a wider and comprehensive meaning with a view to recognise her absolute property rights. Andhra Pradesh in India was the first state to confer equal share to daughters in ancestral Coparceners property governed by Mitashara Law in a Hindu joint family on par with the male coparceners. Karnataka (1990), Tamilnadu (1989) and Maharashtra (1994) followed suit by taking a clue from

Andhra Pradesh by providing for equal rights to daughter in Coparcenary joint Hindu family. Kerala abolished the joint family system with Matrilineal Inheritance.

Another progressive bill was introduced in Parliament in 2010, seeking to amend the Hindu Marriage Act 1955, conferring equal rights to a divorced wife in her husband's immovable property residential (house, land) acquired after marriage. On May 26, 2012, The Union Cabinet had earlier come out with a law stating that woman enjoyed a share in all the immovable property owned by the husband in case of a divorce. However, with the recent amendment, a woman now get a clearly defined share but only from the residential immovable asset of her husband, which includes just the residential property rather than all the immovable assets. The most important aspect of the amendment is that in the eventuality of a divorce women will be entitled to a share in the property or assets acquired by the couple after marriage.

Inheritance and Succession rights of Muslim Women:

The body of Islamic law is referred to as Shari'a or "The Clear Path". This body of law emanates primarily from four sources: The Qur'an, Sunna, Qiyas, and Ijma. The Qur'an is the word of God as recited by Mohammed, his messenger (PBUH). The Qur'an consists of 6219 verses. About five hundred of these are legalistic in tone and some eighty verses deal exclusively with legal topics.

The Muslim Law of succession and inheritance has been derived from Qura'nic verses. The tradition of the Prophet and some of the pre-Islamic customs which were approved by the prophet are also taken into consideration. The prophet was indeed a great social reformer much ahead of his time in his thoughts and in a span of about twenty three years he had introduced monumental reforms in all aspect of private and public life. There is no text in the Quran, no saying of our prophet, which can possibly be held to justify the practice of depriving women of the natural benefits which Allah has decreed for all mankind.

The Quran reminds them that they are all one race, one preceding from the other, the man from the women and the women from the man.

Before the coming of Islam, women themselves were objects of inheritance; part of the estate to be divided. Women had neither any right of inheritance nor any right to possess property since they themselves were considered movable property. Hamid Khan writes in his book, "The Islamic Law of Inheritance", "Females and Cognates were excluded from inheritance. In certain cases women constituted part of the estate. A step son or brother took possession of a dead man's widow or widows along with his goods and chattels. The Qur'an abolished this practice. "From what is left by parents and dear relatives, there is a share for men and a share for women- whether the property be small or large –a determinate share." (Qur'an 4:7)

Muslim law of succession is based on Qur'an and therefore, it is a divine law. The law is, therefore, completely different from Hindu Law where a person will acquire right of inheritance even though he may be in the mother's womb. The law of inheritance provides for fixed shares which take precedence over the succession of the next of kin to the residue.

The Verses IV: 1-14 and 176 of the Holy Qur'an deals with the matters of inheritance. Islam is the first religion to give women right of inheritance. In the Holy Quran daughters are given rights of inheritance from their parents, wives have a right of inheritance on husband & mothers have right of inheritance on their children (if they happen to die before her). The holy prophet by instituting rights of property, ownership & inheritance gave women certain safeguard. Islam, by giving woman the right to inherit, changed the status of women in an unprecedented fashion.⁶¹

Sir William Jones observes, "I am strongly disposed to believe that no possible question could occur on the Muslim law of succession which might not be rapidly and correctly answered". It is an excellent system of formal inheritance. Macnaghten's remarks are also relevant and deserve consideration. He says, "In these provisions we find ample attention paid to the inheritance of all those whom nature places in the first rank of our affections and indeed it is difficult to conceive any system containing rules more strict, just and equitable."

The Muslim law is uncompromising in the scheme of succession and inheritance unlike other laws.

. The daughter is a primary heir; she always inherits in one of two capacities. A single daughter or two or more daughters, without a son (or sons) she inherits as an agnatic heir. The daughter's share is equal to one half of the son's; she however always has full control over this property. It is legally hers to manage, control, and to dispose off as she wishes in life or death.

. Mother will get 1/3 share of her son's property (when there are no children) will get 1/6 share of her son's property (when there are children), maternal grandmother will get 1/6 share (only if there is no mother or grandfather), paternal grandmother gets a share of the total property (only if there is no mother or grandfather).⁶³

. Mahr is a sum of money or some other property which the wife is entitled to get from the husband on marriage. It can be fixed at any time before marriage or at the time of marriage. In Islamic law, Mahr belongs absolutely to the wife. It may be either prompt (mu'ajjal) or differed

Mahr, in Islamic law, as stated by Mulla, "is a sum of money or other property which the wife is entitled to receive from her husband in consideration of marriage". It is not in consideration of proceeding from the contract of marriage but it is an obligation imposed by the law on the husband as a mark of respect for the wife. The amount of the Mahr is decided by the parents or elders of either side, taking into consideration the status of the family and the earnings of the man concerned. Islam has not decided lowest or highest amounts as Mehr. It may range from 100s to 1000s or it could be in kind from a little ring to a heap of gold. If Mahr is not paid, the wife can claim it through court of law.

. Similarly, widow's share is fixed i.e. one fourth if he dies issueless and one eighth in case husband leaves behind children and it gets precedence over all the inheritance she gets neither less nor more. Whether there are numerous inheritors or none at all. If there are more wives than one, they divide the one fourth or one eighth as the case may be, among themselves. A childless widow does not take her share from immovable property of her husband; but she is entitled to her proper share in the valuables of the household effects, trees, buildings and movable property, including debts to the deceased.

. Among the descendants, daughter finds the first place as a share in the absence of son and inherits one half of the estate on the death of

her parents and if they are more than one, they jointly take two third of the estate. According to K.P. Saksena, "A daughter is just as much a co-sharer in the property left by her father as her brothers, only with the difference that her share is half of her brothers".⁶³

It would have become evident by now that Muslim women enjoy all rights under the Muslim law and are better placed than their sisters, governed by other laws, either worldly or religious. She suffers no disability because of her sex and enjoys legal and social status. The Holy Quran and the prophet have ordained to treat women with kindness and generosity. These rights were granted to her under religious guarantees more than fourteen hundred years ago when her condition was pathetic, pitiable, and worse than domestic animals.

CHRISTIAN LAW OF INHERITANCE AND SUCCESSION

The general law to the inheritance and succession can easily be Christian is entitled to equal shares on inheriting the property on the death of a person. The Indian Succession Act 1925, especially under section 31 to 49 of the act is applicable to Christian and Jews community. Christian of Travancore and Cochin are governed by their own succession laws.⁶⁴

The Indian Succession Act 1925, states that everyone is entitled to equal inheritance, barring exceptions to Hindus, Sikh, Jains, Buddhists and Muslims, as they are governed under separate laws of succession.

* According to the law if the father died intestate (i.e. without a written will or any settlement of property), under section 33, the widow will get 1/3 of the property and the balance property will be shared equally between the sons and daughters. Under the Indian Succession Act 1925, there is no discrimination between sons and daughters with regard to the distribution of the intestate father's property. If he has left none but his widow, the whole property shall belong to his widow.

. As per section 15 and 16 of the Indian Succession Act 1925, by marriage a woman acquires the domicile of her husband if she had not the same domicile before and a wife's domicile during marriage follows the domicile of her husband.

. Section 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 intestate her.

. Section 48, where the intestate neither has lineal descendant nor parent or siblings, his property shall be divided equally among those of his relative who are in the nearest degree of kinship to him.

. The law for Christian does not make any distinction between relations through the mother or the father. 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.

. Christian law does not recognise children born out of wedlock; it only deals with legitimate marriages. It does not recognise polygamous marriages either.

. A child in the Womb is also entitled to a share of the property.

. Any money earned by a Christian woman is her own property. Nobody can take it away from her. She has the right to will away or gift away her own money, jewellery and other property to anybody she wants.

. Even if a Christian woman's father spends money on gifts at her marriage, she is still entitled to a share in the property. Christian of Travancore and Cochin are governed by their own succession laws. The most controversial feature of the Travancore and Cochin Christian Succession Acts relates to the rights of a daughter to the property of her intestate parents. The Cochin act gives the daughter a share along with the sons, subject to the limitation that her share shall be one third in value of that of a son [Section 20(b)].⁶⁵

Even though Christian women have equal right as per law, they rarely avail the provision, either due to ignorance or due to opposition from male heirs. Mary Ray is an Indian educator, who won a lawsuit in 1986, against the inheritance legislation of her Keralite Syrian Christian

community in the Supreme Court. The judgement ensured equal rights for Syrian Christian women, with their male siblings in their ancestry property.

Inheritance and Succession Rights of Parsi Women:

As early as 1835, The Parsi community had represented that they were subjected to serious disadvantages in the absence of a fixed written law. The Parsi Law Commission recommended that a separate law should be enacted for the entire Parsi community; consequently, a separate act governing intestate succession amongst the Parsis was passed. This has now been incorporated in section 50-56 of the Indian Succession Act, 1925. The law of succession applicable to the Parsis and their property prior to the year 1837 was the English Common Law subject to certain exceptions as to marriage and bigamy.⁶⁶

They wanted to update the Parsi intestate Succession Act 1865, which was enacted and the material changes by this act were, that the widow and daughters of a Parsi intestate in the Mofussil, who were only entitled to maintenance, got a share in the property of the deceased for the first time. The Mofussil Parsis, following Hindu customs, excluded Parsi woman from a share in the estate of the male. They had only right to maintenance and adoption.

Like Hindu and unlike Muslim law, there were separate rules for the distribution of the assets of a male and a female. A Parsi woman is accorded no protection against arbitrary decision either. Where as in Muslim law a father cannot disinherit his wife or daughter, he can only will away one eighth of his property according to his wishes. A Parsi male is not bonded by any such law. ⁽²³⁾

The son is entitled to an equal share of the mother's property along with the daughter; the daughter is not entitled to the same right when she inherits the property of her father. The son's share in his father property is twice that of a daughter. ^(XC)

Also, if a Parsi woman marries a non Parsi she would have to follow her husband's faith and bring up her children according to his wishes. Children of Parsi woman married to non-Parsi have no rights, as under Parsi law they are not considered Parsi. There is no satisfying explanation for such gender bias.

When a Parsi woman dies intestate, leaving her husband and children, the property is divided equally among the widower and children. Male is not bound by any such restriction. The widow gets only as much as any of her sons. The son is entitled to an equal share of the mother's property along with the daughter, if the intestate's parents survive him, then the father gets half the share of the son - that is the same as the daughter. But the mother gets only half the share of the daughter.

Inheritance and Succession Rights of Jew Women:

The Talmud says "How can a woman have anything; whatever is hers belongs to her husband? What is his is his and what is hers is also his, her earnings and she may find in the streets are also his. The household articles, even the crumbs of bread on the table, are his. Should she invite a guest to her house and feed him, she would be stealing from her husband....." (San,71a,Git.62a)

The Jewish tradition regarding the husband's role towards his wife stems from the conception that he owns her as he owns his slave. As soon as a Jewish woman gets married, she completely loses all control over her property and earnings to her husband. Jewish Rabbis asserted the husband's right to his wife's property as a corollary of his possession of her: "Since one has come into the possession of the woman does it follow that he should come into the possession of her property too:" and "since he has acquired the woman should he not acquired also her property". Thus, marriage caused richest woman to become practically penniless⁶⁷

The property of a Jewish female was meant to attract suitors. A Jewish family would assign their daughter a share of her father's estate to be used as a dowry in case of marriage. It was this dowry that made Jewish daughters an unwelcome burden to their fathers. The father had to raise his daughter for years and then prepare for her marriage by providing a large dowry. The dowry was the wedding gift presented to the groom under terms of tenancy. The bride would lose all control over the dowry at the moment of marriage. Moreover, she was expected to work after marriage and all her earnings had to go to her husband in return for her maintenance which was his obligation.

She could regain her property only in two cases: divorce or her husband's death. In the case of her husband's death, the wife could regain her pre-marital property but she was not entitled to inherit any share in her deceased husband own property. But if she would die first, he would inherit her property.

Talmudic law gave right to the daughters to inherit only in the absence of brothers and under the condition that she marries within her father's clan.

Gender Discrimination & Social ills in Hindu Inheritance:-

The right of property is important for the freedom and development of a human being. Prior to the act of 1956, Hindus were governed by Shastric and Customary laws which varied from religion to religion, and sometimes it varied in the same religion on the basis of caste.

A woman was humiliated, neglected in her own natal family as well as in the family she married into because of blatant disregard and unjustified violation of these provisions by some of the personal laws.

According to the Hindu Succession Act, section 23, denied a married daughter the right to residence in the parental home unless widow, deserted or separated from her husband and further denying her right to demand her share in the house if occupied by male family member.

A similar instance of inequality created by law was the establishment of new right to will away property. The act gave a weapon to a man to deny a woman of the rights she earlier had under certain schools of Hindu law. The legal right of Hindus to bequeath property by way of will was conferred by the Indian Succession Act 1925 Section 30. It can also defeat a widow's rights as well as a daughter right. The right to will away property was traditionally unknown to Hindus.

The provision under section 6 of HSA also contains gender bias. The property of a male Hindu dying intestate devolves according to section 8 of the HSA. The principle of representation goes up to two degrees in the male line of descent; but in the female line of descent it goes only up to one degree. Accordingly, the sons-son and sons-son-daughter get a share but a daughters-daughter- son and daughters-daughter-daughter do not get anything.

Gender Discrimination / Social ills in Muslim Inheritance -

The present practice is that the women as mothers, wives, daughters and widows do not have equal rights, while Qur'an gives equality to them. The customary practices are highly discriminatory and it excluded daughters and others, like widows in the bottom line of the succession order. This practice runs contrary to the Shariat, where a daughter and a widow cannot be excluded by any other heir and also have the protection from the testamentary restrictions.

While most Muslim women (75 percent) were well informed about the share of daughters in inheritance, but when asked about whether (especially married) they had claimed their share (in case not given), most of them had relinquished their share of property to their brothers in the name of emotional attachment. Secondly, they felt the Gift at the time of marriage given to them as well as expenses incurred on their marriage is another form of giving the daughters share.

In most of the cases, Mehr was not given to women not even after divorce had taken place, neither in Khula nor in Fasakah. No divorced women were given maintenance either for themselves or for their children in spite of their persistent approach of Shariat Courts. A few of them got back their dowry. The practice of Islamic principles and laws are far behind the gender justice for which Islam stood and advocated 1400 years ago.

Most of her rights are confined within the pages of the rule book. The rights granted to women by Islam have given her desirable rights, exalted status and a constructive role in society.

Gender Discrimination in Christian Inheritance -

It has largely been the spirit of reform rather than of revolution that has animated the struggle of Christian woman for equality. According to the Indian succession Act of 1925, the Christian widow right is not exclusive and gets curtailed as the other heirs step in. Only if the intestate has left none who are of kindred to him, the whole of his property would belong to his widow. If there are any lineal decedent, than only one third devolves to his widow.

Another anomaly is a peculiar feature that the widow of a pre-deceased son gets no share, but the children whether born or in the womb at the time of death would be entitled to equal share.

The Cochin Christian Succession Act, gives the daughter a share along with the sons, subject to the limitation that her share shall be one-third in value of that of a son[section20(b)] and gives one third to the widow, with complete right over it. The Travancore Christian Act (1916) gave widows one third of the property for maintenance until death or re-marriage, and daughters' one fourth of the sons share.

The Christian women's property rights in *Mary Roy v State of Kerala* and others, in which provisions of the Travancore Christian Succession Act, 1092 were challenged as they severely restricted the property right of women belonging to the Indian Christian community in a part of south India formerly called Travancore. The first legislation guiding the rules of intestate succession, which came into existence, was the Travancore Christian Succession Act, in the erstwhile state of Travancore which denied any share to women. Following this act, a similar legislation was passed in the erstwhile state of Cochin called the Cochin Christian Succession Act in 1921, but considered women as sharers provided they were not given Streedhan. It is high time for the Christians of Travancore and Cochin to see that immediate and necessary legislations are under taken to provide equal shares to daughters along sons in the property of their intestate parents.

Gender Discrimination /Social ills in Parsi Inheritance -

It is observed that:- " Parsi women were discriminated against by laws which have no basis in the community's religious belief". We have seen how the ownership and inheritance rights of Hindu and Muslim women are affected by their respective Personal laws. The Parsis, a community with 90% literacy, a strong hold on the industrial and professional life of the country; although they are one of its smallest minority communities, have among the most unjust inheritance laws in the country today. This finally only goes to prove the discrimination and gender biases do not disappear with progressive education

Gender Discrimination / Social ills in Jewish Inheritance -

The Jewish tradition regarding the husband's role towards his wife stems from the conception that he owns her as he owns his slave. This conception has been the reason behind double standard in the laws of adultery and behind the husband's ability to annul his wife's ownership. This conception has been responsible for denying the wife any control over her property or her earnings.

Reform Judaism generally holds that the various differences between the roles of men and women in traditional Jewish laws are not relevant to modern conditions and not applicable today. Reform Judaism believes in the equality of men and women. The Reform movement reject the idea that Halakha (Jewish law) is the sole legitimate form of Jewish decision making, and holds that Jews can and must consider their conscience and ethical principles inherent in the Jewish tradition when deciding upon a right course of action.

The call for change demanded that women be accepted as witnesses before Jewish law, be considered as bound to perform all Mitzvot, be allowed full participation in religious observances, have equal rights in marriage and be allowed to initiate divorce, be counted in the Minyan, and be permitted to assume positions of leadership in the Synagogue and within the general Jewish community.

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

Kerala. The father / testator can disinherit a daughter through a will also. It can be rightly added that Christian women are suffering from double discrimination, the discrimination on the basis of religion and discrimination on the basis of sex.

The constitution of India recognizes equality of status and in fact provides for certain provisions under the chapter on fundamental rights more favourable to women but in actual practice they are observed more in breach than in compliance. This is absolutely true in the case of Christian women.

Survey based Comparative and Descriptive study of Personal Laws:

The aim of this survey is to re-examining the awareness of women regarding their personal laws. From time to time certain amendments have carried out in the laws relating to marriage and Divorce under different personal laws. It is equally important to ascertain as to how these laws have affected the status of women professing different personal laws and what they think about such laws.

This is a comparative and descriptive study based on Hindu, Muslim, and Christian Personal Laws. Much of the work in this regard concentrates solely on women.

Data were mainly collected through the interview method with the help of a questionnaire. Primary data were collected from 45 women, each from Hindu, Muslim and Christian communities. The study, therefore, is not merely a survey of opinions but aims at finding out the real dynamics of thinking of Hindu, Muslim and Christian women.

In order to gauge the level of awareness and understanding of Personal Laws research scholar conducted a sample survey of women among the three major religions viz. Hindus, Muslims & Christian across the cross section of women and the results are explained as under:-

Methodology

Sample Size:- 45 women were chosen from each religious group with a mix of educated and uneducated.

Educated means any women who has passed High School or equivalent which included professionals like doctors, counsellors and teachers

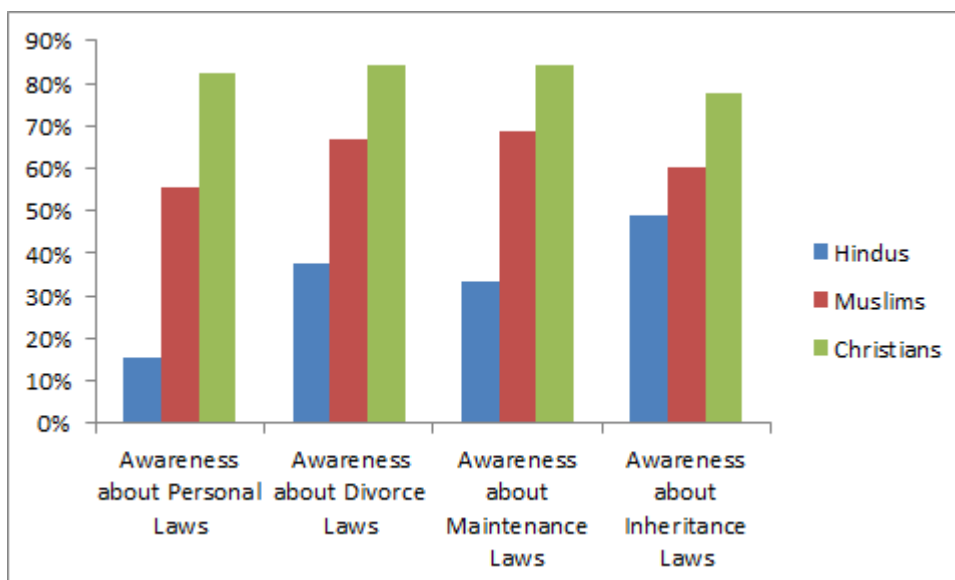
Uneducated meant those women who had no formal education but do necessarily mean illiterate

The questionnaire was designed (sample attached) to get a very objective response on three basic issues pertaining to women's understanding of their respective Personal Laws i.e. Awareness, Effectiveness & Implementation

Explanation of the Results

On Awareness

AWARENESS	Hindus			Muslims			Christians		
	Educated	Uneducated	Total	Educated	Uneducated	Total	Educated	Uneducated	Total
No of Respondents	28	17	45	19	26	45	38	7	45
Awareness about Personal Laws	6	1		14	11		35	2	
	21%	6%	16%	74%	42%	56%	92%	29%	82%
Awareness about Divorce Laws	13	4		16	14		33	5	
	46%	24%	38%	84%	54%	67%	87%	71%	84%
Awareness about Maintenance Laws	12	3		16	15		33	5	
	43%	18%	33%	84%	58%	69%	87%	71%	84%
Awareness about Inheritance Laws	17	5		14	13		32	3	
	61%	29%	49%	74%	50%	60%	84%	43%	78%



Regarding the awareness of Personal Laws, the Hindu women were least aware at 16% as compared to 56% in Muslims and 82% in Christians

On awareness about Divorce Laws, the Hindu women were least aware at 38% compared to 67% in Muslims and a high of 84% among the Christians

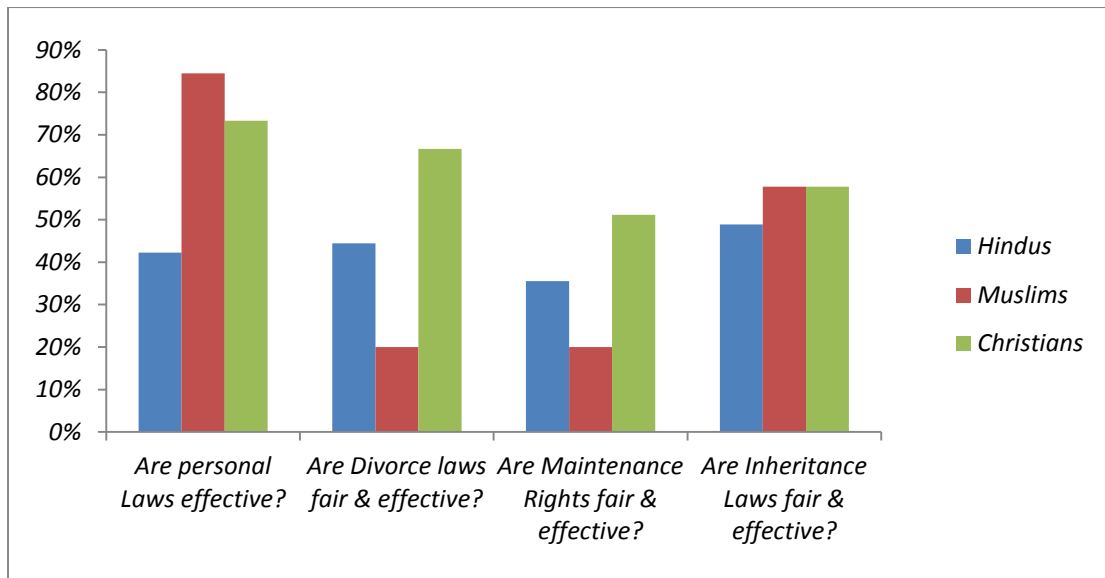
On awareness regarding Maintenance & Inheritance Laws, the Hindu women were least aware at 33% & 49% respectively as compared to 69% and 60% among Muslims and 84% and 78% among Christians. These awareness percentages are significantly higher among “Educated” women across all religious groups as compared to “Uneducated” women.

Possible Explanations

- I. The Personal Laws of Muslims & Christians are a matter of serious discussions among the community and often in the media and political discourse for various reasons thereby creating higher awareness among the followers and others.
- II. The impact of Personal Laws is more pronounced among the Muslims and Christians than the majority Hindu community resulting in higher awareness.
- III. Awareness about inheritance among Christians is the highest as it is more straightforward among their communities, second come Muslims where Sharia governs inheritance but it is a male dominated aspect resulting in less awareness among females and least among Hindus as it is more male based aspect and the interests of the females are decided by male dominated society.

On Effectiveness

EFFECTIVENESS	Hindus			Muslims			Christians		
	Educated	Uneducated	Total	Educated	Uneducated	Total	Educated	Uneducated	Total
No of Respondents	28	17	45	19	26	45	38	7	45
Are personal Laws effective?	14 50%	5 29%	42%	16 84%	22 85%	84%	28 74%	5 71%	73%
Are Divorce laws fair & effective?	12 43%	8 47%	44%	5 26%	4 15%	20%	26 68%	4 57%	67%
Are Maintenance Rights fair & effective?	10 36%	6 35%	36%	5 26%	4 15%	20%	20 53%	3 43%	51%
Are Inheritance Laws fair & effective?	14 50%	8 47%	49%	10 53%	16 62%	58%	22 58%	4 57%	58%



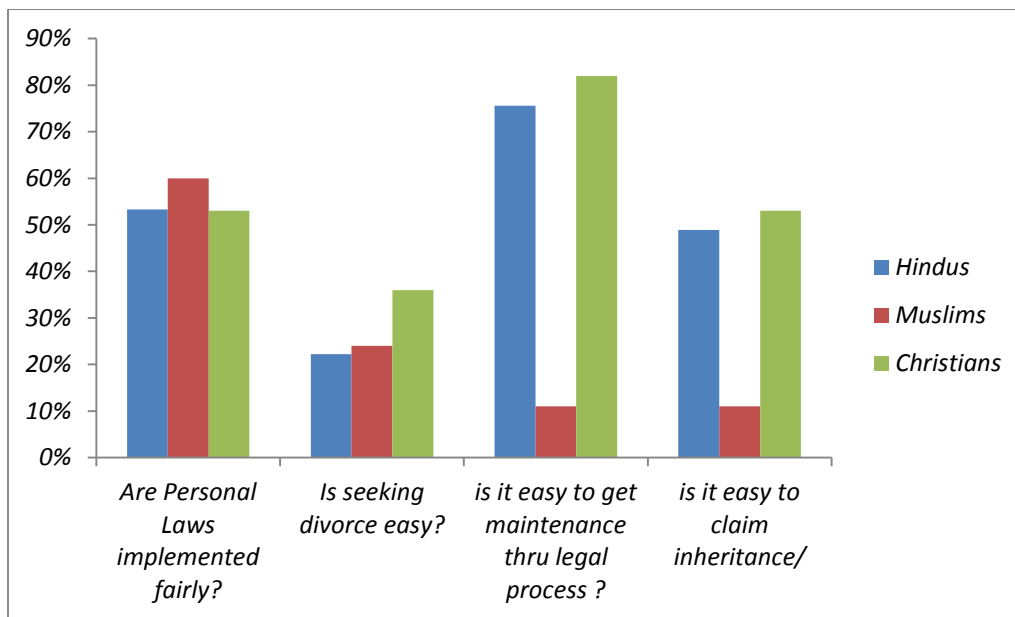
On asked about the fairness & effectiveness of their respective Personal Laws, the results of the survey showed that 84% of Muslim and 73% of Christian women expressed that their personal Laws are effective while only 42% of Hindu women said they were effective which is in line with the response to awareness.

However, on the questions of Divorce and Maintenance, 80% the Muslim women expressed their opinion against the fairness and effectiveness while 56% of Hindu and only 33% Christian women expressed their dissatisfaction over Divorce laws. On Maintenance Laws 64% Hindu women expressed their dissatisfaction as compared to 49% among Christians.

On the question of effectiveness and fairness over Inheritance Laws the opinion of women is quite uniform with 49% Hindu women expressing satisfaction compared to 58% among Muslims & Christian.

On Implementation

Implementation	Hindus			Muslims			Christians		
	Educated	Uneducated	Total	Educated	Uneducated	Total	Educated	Uneducated	Total
No of Respondents	28	17	45	19	26	45	38	7	45
Are Personal Laws implemented fairly?	14	10		10	17		21	3	
	50%	59%	53%	53%	65%	60%	55%	43%	53%
Is seeking divorce easy?	5	5		5	6		12	4	
	18%	29%	22%	26%	23%	24%	32%	57%	36%
is it easy to get maintenance thru legal process ?	22	12		3	2		32	5	
	79%	71%	76%	16%	8%	11%	84%	71%	82%
is it easy to claim inheritance/	17	5		3	2		20	4	
	61%	29%	49%	16%	8%	11%	53%	57%	53%



53% of women among Hindus & Christian feel that the Personal Laws are fairly implemented while 60% women among Muslims feel the same.

In terms of “ease of seeking divorce” only 22% of Hindu women, 24% of Muslim & 36% of Christians agree that it is easy but majority of women from all three religious groups feels that it is quite difficult to seek divorce.

On Maintenance, while 76% & 82% of Hindu & Christian women respectively feel quite positive that the laws are fairly implemented while only 11% of Muslim women feel they are fairly implemented. Similarly on Inheritance 89% Muslim women feel that the Laws are **not fairly** implemented however only 50% women from Hindus and Christian feel that it is unfairly implemented.

QUESTIONNAIRE

NAME:-	RELIGION
--------	----------

ADDRESS / CITY OF RESIDENCE :-

CATEGORY	EDUCATED <input type="checkbox"/>	UNEDUCATED <input type="checkbox"/>
<i>(Educated:- High School and above. Uneducated;- No formal schooling)</i>		

AWARENESS

ARE YOU AWARE OF YOUR RELIGIOUS PERSONAL LAWS?	YES	NO
ARE YOU AWARE ABOUT YOUR DIVORCE LAWS?	YES	NO
ARE YOU AWARE ABOUT MAINTENANCE LAWS	YES	NO
ARE YOU AWARE ABOUT INHERITANCE LAWS?	YES	NO

EFFECTIVENESS

ARE PERSONAL LAWS EFFECTIVE?	YES	NO
ARE DIVORCE LAWS FAIR & EFFECTIVE?	YES	NO
ARE MAINTENANCE RIGHTS FAIR & EFFECTIVE?	YES	NO
ARE INHERITANCE LAWS FAIR & EFFECTIVE?	YES	NO

IMPLEMENTATION

ARE PERSONAL LAWS IMPLEMENTED FAIRLY?	YES	NO
IS SEEKING DIVORCE EASY?	YES	NO
IS IT EASY TO GET MAINTENANCE THRU LEGAL PROCESS?	YES	NO
IS IT EASY TO CLAIM INHERITANCE?	YES	NO

Surveyed by

Aliya Naqvi

Research Scholar

Dept. of pol. Sc., Rajasthan Univ., Jaipur

		Hindus	Educated	Uneducated	Total 45	
		No of Respondents	28	17		
Awareness	Awareness about Personal Laws	6	21%	1	6%	
	Awareness about Divorce Laws	13	46%	4	24%	
	Awareness about Maintenance Laws	12	43%	3	18%	
	Awareness about Inheritance Laws	17	61%	5	29%	
	Muslims					
			No of Respondents	19	26	
	Awareness about Personal Laws	14	74%	11	42%	
	Awareness about Divorce Laws	16	84%	14	54%	
	Awareness about Maintenance Laws	16	84%	15	58%	
	Awareness about Inheritance Laws	14	74%	13	50%	
	Christians					
			No of Respondents	38	7	
	Awareness about Personal Laws	35	92%	2	29%	
	Awareness about Divorce Laws	33	87%	5	71%	
	Awareness about Maintenance Laws	33	87%	5	71%	
	Awareness about Inheritance Laws	32	84%	3	43%	

Awareness about Personal laws: Muslims educated and uneducated both were well aware about the personal laws similarly the Christians were well aware, probably due to the influence of the mosque and the church for religious discussions.

		Hindus	Educated	Uneducated	Total 45	
Effectiveness	No of Respondents		28	17		
	Are personal Laws effective?		14 50%	5 29%		
	Are Divorce laws fair & effective?		12 43%	8 47%		
	Are Maintenance Rights fair & effective?		10 36%	6 35%		
	Are Inheritance Laws fair & effective?		14 50%	8 47%		
	Muslims					
	No of Respondents		19	26		
	Are personal Laws effective?		16 84%	22 85%		
	Are Divorce laws fair & effective?		5 26%	4 15%		
	Are Maintenance Rights fair & effective?		5 26%	4 15%		
	Are Inheritance Laws fair & effective?		10 53%	16 62%		
	Christians					
	No of Respondents		38	7		
	Are personal Laws effective?		28 74%	5 71%		
	Are Divorce laws fair & effective?		26 68%	4 57%		
	Are Maintenance Rights fair & effective?		20 53%	3 43%		
	Are Inheritance Laws fair & effective?		22 58%	4 57%		

Personal laws are considered to be the most effective among Muslims and Christians and least among the Hindus. Muslims and Christians are more concerned about Personal Laws due to their minority character.

		Hindus	Educated	Uneducated	Total 45	
Implementation	No of Respondents		28	17		
	Are Personal Laws implemented fairly?	14	50%	10	59%	
	Is seeking divorce easy?	5	18%	5	29%	
	is it easy to get maintenance thru legal process ?	22	79%	12	71%	
	is it easy to claim inheritance/	17	61%	5	29%	
	Muslims					
	No of Respondents		19	26		
	Are Personal Laws implemented fairly?	10	53%	17	65%	
	Is seeking divorce easy?	5	26%	6	23%	
	is it easy to get maintenance thru legal process ?	3	16%	2	8%	
	is it easy to claim inheritance/	4	21%	6	23%	
	Christians					
	No of Respondents		38	7		
	Are Personal Laws implemented fairly?	21	55%	3	43%	
	Is seeking divorce easy?	12	32%	4	57%	
	is it easy to get maintenance thru legal process ?	32	84%	5	71%	
	is it easy to claim inheritance/	20	53%	4	57%	

Personal laws are implemented fairly. Personal laws are a subject governed by social and cultural factors other than religious aspect hence all the three communities were apprehensive of personal laws and completed uniform laws.

Disparity in the status of women due to their personal Laws:

A woman in India is although awarded with the fundamental right of gender equality and right to life and liberty, ensuring dignified and equal status to that of a man under the constitution of India. But in actual practice they are observed more in breach than in compliance position. In India, it is particularly the personal laws that principally govern the lives of women. Women professing any religion; Hindu, Muslim, Christian, Parsis and Jews etc enjoy some rights which govern various aspects of their lives such as marriage, divorce, maintenance and inheritance. Her virtues, vices, strength, and her weakness are assumed on religious practices and religious norms. The evaluation of the status of women in India has been a continuous process of ups & downs throughout the history. It is indeed ironical that when Indian mythology places women on a very high pedestal and they are worshiped and honoured as Goddess; in practice we show no concern honour. It is a sorry reflection mirroring the attitude of indifference of the society which results in a total negation of the human rights of women in which gender justice nosedives.

Historical research has shown that it was the normal practice, from ancient times through the post-colonial era of the last century, for people, whether conquerors or the conquered, to continue to live under 'personal laws' based usually on a combination of custom, tradition and religion that defined them as a people. Patriarchy is the basis of personal laws, regardless of community. In a patriarchal kinship system, a son is the father's natural apprentice, successor and supporter of the parents in the old age. Therefore, a father believes that he will continue to live in the world through his son. A daughter in the other hand cannot effectively take the place of a son. Discrimination against the girl child starts the moment she enters into the mother's womb. All personal laws, the one feature is that they govern unequal and lesser rights to women. These personal laws ensure the secondary status of women within the family as well as they continued social and economic dependence of the women upon the male members of the family be they fathers, brother, husband or son. Traditional India had seen a woman only as a member of the family or a group – as daughters, wives

and mothers – and not as an individual with an identity or rights of her own.

The 'ideals' of Indian womanhood is the passive, chaste, devoted and faithful like 'Sita' rather than other strong independent women found in Hindu mythology.

It is said that no Nation has held their women higher esteem than the Hindus. But did she continue to enjoy this position in real practical life so long? The Vedic period held her high esteem and conferred her honourable and respectable position. The marriage was regarded as sacrosanct and the family ideal was decidedly high. The woman on marriage acquired an honourable position and considerable status. The rig-veda provides a glimpse of the position "..... we the queen in the father-in-law household". But the day was not far off she became subservient due to evolution of Brahmanical doctrine. The Brahmanas dominated on Manusmriti and did not allow the women to live an independent life of her own. The woman should be under the protection of man during her whole life was the theme of Manusmriti. The so called honourable status earned by a Hindu women in Vedic era showed the sign of decay during the period of Dharmashastra. This period made her subordinate and dependent on male. Even today his laws keep millions helplessly in prison of orthodoxy. The male dominated society had a great bias and discriminatory attitude towards women. According to Anjani Kant; Thus debarring her in claiming a separate and independent identity, status and personality, she had to grow and develop the personality under the umbrella of the men which in real and practical life was unfeasible.

In Qu'ran it was loudly proclaimed:

O mankind! Reverence
Your guardian lord,
Who created you,
From a single soul
Created, of like nature,
His mate, and from them twain
Scattered (like seeds) countless men and women;
Reverence God, through whom
Ye demand your mutual (rights)

And (reverence) the wombs
(that bore) for God
Ever watches over you.
QURAN:4:1

It was declared that the discrimination which the world has created between man and woman is absurd and baseless. The whole mankind is the offspring of the single human soul. The most important thing is, Islam has assigned woman a prominent position at social level. Hence, she can lead an honoured and dignified life without becoming a victim of any inferiority complex. The right of Divorce enjoyed by husband in Muslim law had come under much hammering and criticism. The most disturbing is the Talaq-ul-Bidat for every married Muslim woman. It is against the spirit of the Holy Qu'ran and Sunnah. It is banned in some Muslim Countries. The spirit of Islam is monogamous not polygamous. Polygamy is allowed on the condition of equal and just treatment in all respects which is not possible. The divorced woman is entitled to get maintenance from her former husband till she observes iddat. The question now arises as to who will maintain her if she has no supporter or is of old age. All this happened in the name of Islam. Inheritance laws have created less noise and a debate than marriage and divorce laws. Mainly in this regard social inequalities has cut across communities and women, for most part repressed and unaware of even the rights that exists, have been unable to secure them.

Following independence, personal laws have undergone piecemeal reforms through judicial and legislative intervention. Such reforms have, however, been largely limited to the laws of the majority community in every country. Reforms in personal status or Family law never take place in the absence of social opposition. On the contrary, government interference in the field of personal status has always drawn the fierce resistance of ethno-religious communities whose norms and institutions have been targeted by reforms. Hindu law in India has been modified by a series of statutes; Muslim law has been reformed by the Muslim Family Laws Ordinance of 1961 in Pakistan, and supplemented by the Muslim Marriages and Divorces (Registration) Act of 1974, and the Family Courts Act of 1985 in Bangladesh. In contrast laws applicable to

minorities in each country remain as crystallised during the Colonial period.

To quote Justice Sujata vs Manohar “ it is easy to eradicate deep seated culture values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself may not be enough, law is only an instrument; it must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced can transform society. And an effective social reform movement does not need the help of law and a sympathetic judiciary to achieve its objectives” . .

Status of women in a religion depends on regional factors; a region that has better economy and education, the status of women improves. It is evident in the present western society and the developed countries the freedom of women, irrespective of religion, is better than that from under developed or developing countries. The status of women in the country is interconnected with the social and economic development in the country. If we empower them economically and socially, it would automatically raise their status in the society. Most of the countries in Asia, have in the recent years witnessed a socio-political phenomenon, often called fundamentalism, revivalism, communalism or ethnic conflict which has had a deep impact on the lives and rights of women. Women in Taliban controlled Afghanistan faced treatment condemned by the international community, women are forced to wear veil in public, not allowed to work, or get educated after the age of eight and face public flogging and execution for violations of the Taliban’s diktat disguised in the name of Islam.

In many countries during peace time, a women’s most dangerous environment is the home she lives in. There are enough and more examples of women getting beaten and even killed in the name of “Honour” for their behaviour, if it is suspected to have tainted their families. Parents giving their daughters in marriage while still a child or in exchange for money, to refuse her the right to chose a marriage partner or to sell her to a human trafficker or a flesh trader. These things are happening very commonly in the supposedly “safe” environment of

her home. If a man marries her without her adult consent, confines her to the house, beats her for disobedience or mishap or divorces her unilaterally without support. She has to bear all this and they happen within the privacy of a family home. Indian wives continue to bear the brunt of physical and mental torture by their husband.

There is an inherent discrimination against women in the Indian social structure. This prejudice is widespread even among the educated and enlightened people. Education is the most powerful instrument for changing women's position in society. Education for women plays an important role in women's empowerment. Education boosts a women's self esteem, her self confidence, her employment opportunities and her ability to deal with the problem of the world around. One cannot teach self confidence and self esteem; one must provide the conditions in which these can develop. Education helps girls and women's to know their rights and to gain confidence to claim them. Education is important for everyone, but it is a critical area of empowerment for girls and women's. This is not only because education is an entry point to opportunity but also because a woman's educational achievements have positive ripple effect within the family and across generation.

REFERENCES

1. Lalita Dhar Parihar - Woman and Law, Published By Eastern Book Company ,2011, p 13-14
2. Lalita Dhar Parihar - Woman and Law, Published By Eastern Book Company ,2011, p 22
3. Constitution of India
4. Gour's- Empowerment of women and Gender Justice in India- Law Publishers India Pvt. Ltd. – Allahabad- pg 73
5. Dr Paras Diwan - Family Law Allahabad Law Agency (Page 3-9)
6. Mayne -Treatise on Hindu Law And Usage (1996), 14th Edition
7. Paras Diwan - Family Law , Allahabad Law Agency, (Page 8)
8. Paras Diwan - Family Law , Allahabad Law Agency, (Page 8)
9. Gour's- Empowerment of women and Gender Justice in India- Law Publishers India Pvt. Ltd. –Allahabad- pg 57
10. Anjani Kant - Woman and Law, published by APH Publishing Corporation, New Delhi, (Page 376)

11. Anjani Kant - Woman and Law, published by APH Publishing Corporation, New Delhi, (Page 94)
12. Monica Chawla- Gender Justice, women and Law in India-published by Deep and Deep Publications Pvt. Ltd., New Delhi-2006- pg 26-27
13. Manu Smriti
14. R K Agarwala - Hindu Law, Central Law Agency, Allahabad (Page 34)
15. R K Agarwala - Hindu Law, Central Law Agency, Allahabad (Page 34)
16. U.P.D Kesari- Modern Hindu Law-Central Law Publications, Allahabad- pg 45
17. U.P.D Kesari- Modern Hindu Law- Central Law Publications, Allahabad pg 45
18. U P D Kesari - Modern Hindu Law, Central Law Publication. (Page 45)
19. S.C Tripathi and Vibha Arora- Law Relating Women and Children- Central Law Publications, Allahabad-pg 399
20. U.P.D Kesari- Modern Hindu Law, Central Law Publication. , Allahabad- (Page 48-49)
21. M. Hidayatullah and Arshad Hidayatullah- Mulla -Principles of Mohamedan Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- pg 223-224
22. Quran
23. Iqbal Mullick- Women in Islam- Cyertech Publications, New Delhi- Pg 8-9
24. M.A Qureshi- Text Book on Muslim Law- Central law Publications, Allahabad- pg 46
25. Iqbal Mullick- Women in Islam- Cyertech Publications, New Delhi- Pg 22-24
26. Dr. Paras Diwan- Muslim Law in Modern India-Allahabad Law Agency, Allahabad- page 60
27. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page 11
28. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page 11
29. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page 10
30. Anjani Kant - Woman and Law, published by APH Publishing Corporation, New Delhi, (Page 94)
31. Anjani Kant - Woman and Law, published by APH Publishing Corporation, New Delhi, (Page 93-94)
32. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page- 14
33. R.K. Agarwala- Hindu Law- Central Law Agency, Allahabad- pg 41
34. R.K. Agarwala- Hindu Law- Central Law Agency, Allahabad- pg 42
35. Quran
36. Dr. M.A Queshi- Muslim Law – Central Law Publication, Allahabad- pg 67
37. Dr. Paras Diwan- Muslim Law in Modern India- Allahabad Law Agency, Allahabad - page 83
38. Dr. M.A Queshi- Muslim Law– Central Law Publication, Allahabad – pg 89

39. Dr. M.A Queshi- Muslim Law – Central Law Publication, Allahabad -pg 82
40. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page 30
41. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page 30
42. Justice P.S Narayana's- Law Relating to Christians in India-Gogia Law Agency,Hyderabad
43. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page 28
44. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur -page 28
45. Anjani Kant - Woman and Law, published by APH Publishing Corporation, New Delhi, (Page 94-95)
46. Dr. Paras Diwan - Family Law , Allahabad Law Agency Allahabad- (Page 269)
47. S.C Tripathi and Vibha Arora- Law relating to women and children- Central Law Publications, Allahabad- pg 183
48. S.C Tripathi and Vibha Arora- Law relating to women and children- Central Law Publications, Allahabad- pg 183
49. R.K Agarwala- Hindu Law- Central Law Agency, Allahabad- pg 143
50. Dr. Paras Diwan- Muslim Law in Modern India-- Allahabad Law Agency, Allahabad - page 177-179
51. Dr. Paras Diwan- Muslim Law in Modern India-- Allahabad Law Agency, Allahabad - page 174-175
52. Dr. Paras Diwan- Muslim Law in Modern India-- Allahabad Law Agency, Allahabad - page 180
53. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page 219-220
54. Dr. Paras Diwan - Family Law , Allahabad Law Agency,Allahabad (Page 236-237)
55. Professor Kusum- Family Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- page 218-219
56. Anjani Kant - Woman and Law, published by APH Publishing Corporation, New Delhi, (Page 94-97)
57. S.C Tripathi and Vibha Arora- Law Realating to Women and Children- Central Law Publications, Allahabad- pg 140
58. R.K Agarwala- Hindu Law- Central Law Agency, Allahabad- pg 250
59. S.C Tripathi and Vibha Arora- Law relating to women and children- Central Law Publications, Allahabad- pg 200
60. U P D Kesari - Modern Hindu Law, Central Law Publication, Allahabad- (Page 383)
61. M. Hidayatullah and Arshad Hidayatullah- Mulla Principle of Mohemedan Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- pg 46
62. Anjani Kant - Woman and Law, published by APH Publishing Corporation, New Delhi, (Page 88-89)

63. Hamid Khan- Islamic Law of Inheritance-Oxford University Press- pg 219-222
64. Anjani Kant- Women and the Law-, published by APH Publishing Corporation, New Delhi pg 374-375
65. Anjani Kant- Women and the Law-, published by APH Publishing Corporation, New Delhi- pg 374-375
66. Anjani Kant- Women and the Law-, published by APH Publishing Corporation, New Delhi- pg 376-377
67. Anjani Kant- Women and the Law-, published by APH Publishing Corporation, New Delhi- pg 94-95