

Exploring The Status Of Women In Indian Society: A Descriptive Analysis

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ABSTRACT

This paper delves into the intricate relationship between men and women within the Indian societal framework, focusing on historical and sociological perspectives. Despite the universally accepted principle of gender equality, Indian society reflects a complex interplay of socio-economic conditions, policies, practices, and cultural norms that have historically positioned women in subordinate roles. The paper provides a chronological examination of the status of Hindu women from the Vedic period (1500 BCE - 500 BCE) through to the end of British rule in 1947, highlighting key aspects of their lives, including childhood, education, marriage, divorce, and property rights.

The paper examines practices such as child marriage, dowry, and female infanticide, emphasizing their impact on women's societal roles and opportunities for education. Furthermore, the paper sheds light on legislative efforts made during British rule to address these issues and their limited success due to persistent societal biases. In conclusion, the paper underscores the importance of recognizing the historical and cultural dimensions of gender inequality to effectively address and dismantle the structures that sustain it.

Introduction

Equality among men and women is a universally accepted principle but its realization is often challenged by factors such as, social-economic conditions, policy and practices, positioning of individuals within a given social structure which tend to vary across the globe.¹ Therefore, a universal human rights approach to gender equality which fails to acknowledge these varying features would not be able to point out and address the determining factors responsible for women's subordination in any given society.² The struggle for gender equality, as a result, should take into account the many structures (of race, class, caste, ethnic origin, religion, culture) that are responsible for oppression of women without which the fight for gender equality would not yield desirable results.³ Yet, the role played by these societal structures in strengthening unequal gender positions often gets overlooked while discussing violence against women.⁴ With reference to India, where gender hierarchy is believed to be the norm, women have struggled for equal rights in the past and they still

¹ Rainuka Dagar, Gender, Identity and Violence: Female Deselection in India (1st edn, Routledge 2014) 38.

² Ibid.

³ David G. Mandelbaum, 'Sex Roles and Gender Relations in North India' (1986) 21(46) Economic and Political Weekly 1999, 2001-2002.

⁴ Ibid.

continue to do so.⁵ In addition, in the Indian society, religious, cultural and traditional aspects have also been found to play a fundamental role in shaping the entire discourse on gender rights.⁶

In this backdrop, the present paper briefly examines the nature of relationship between men and women in the Indian society from a historical perspective in order to understand the sociological dimensions, if any, regarding the discourse on violence against women in India. The paper deals with a brief historical account that highlights the status of Hindu women in Indian society during the different stages of their life i.e., childhood, education, marriage, divorce and property rights throughout the following time periods, a.) Vedic period (1500BCE - 500BCE) b.) Post Vedic period (500BCE - 500CE) c.) Medieval period (500CE - 1500CE) and d.) End of British Rule in India (1947). The paper concludes with a section focusing on the safeguards provided by the Constitution of India to Hindu women from ancient discriminatory practices. Due to limited literature, it is not possible to strictly adhere to the above-mentioned timeline while describing the status of Hindu women during the different stages of their life. Further, the historical account in the paper, only gives a general overview of the status of Hindu women without making an in-depth analysis of the complexities of Hindu social order which includes the caste and class hierarchy.

1. Hindu girls during childhood

An attempt to understand the social status of Hindu women in the Indian society is a difficult task because the cultural history of India has conveniently refused to do justice in terms of doing an unbiased reporting about the social, religious or political status of women.⁷ In addition, not everything that has been documented throughout history has survived in its non-corrupted form. Also, most of the accounts do not speak in conformity with one another and therefore, do not provide an accurate description on the status of women.⁸ Keeping this in mind, the paper will only refer to data (when describing the position of Hindu women in ancient India) which has been commented upon and cited widely by scholars in order to gain a general perspective on the history of the position and status of Hindu women.

A historical study on the status of Hindu women begins by observing the practices in the early period of the Vedic age.⁹ It is believed that the Vedic period (1500BCE - 500BCE)¹⁰ was the time when the most ancient religious texts of the Hindus, the Vedas, are said to have been composed.¹¹ During the Vedic period, birth of a daughter was not welcomed in the household. Sons were valued more than daughters.¹² Birth of a son was seen as a blessing as he was someone who would bring prosperity to the family later in life, while, a daughter on the other hand would leave the family in which she is born and will go to another family after marriage which is said to permanently break off her relationship from her parents.¹³ The undesirability of birth of daughters further increased in the Post Vedic period (500BCE - 500CE).¹⁴ Several reasons could be identified for the

⁵ Rashida Manjoo, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to India' (UN Human Rights Council A/HRC/26/38/Add.1, 1 April 2014) <<https://www.refworld.org/docid/53982c3e4.html>> accessed 03 May 2024.

⁶ Ministry of Women and Child Development New Delhi, 'Executive Summary - Report on the Status of Women in India' (Government of India, 2015) 1, 3-4 <http://wcd.nic.in/sites/default/files/Executive%20Summary_HLC.pdf> accessed 03 May 2024.

⁷ Indra, *The Status of Women in Ancient India: A Vivid and Graphic Survey of Women's Position, Social, Religious, Political, and Legal, in India* (2nd edn, Oriental Publishers 1955) 1.

⁸ Ibid 2.

⁹ Sophie M. Tharakan and Michael Tharakan, 'Status of Women in India: A Historical Perspective' (1975) 4(4/5) *Social Scientist* 115, 117.

¹⁰ Gavin Flood, 'History of Hinduism' (*BBC*, 24 August 2009) <http://www.bbc.co.uk/religion/religions/hinduism/history/history_1.shtml> accessed 03 May 2024.

¹¹ 'Scripture' (*BBC*, 25 August 2009) <<http://www.bbc.co.uk/religion/religions/hinduism/texts/texts.shtml>> accessed 03 May 2024 - 'Hindus believe that the texts were received by scholars direct from God and passed on to the next generations by word of mouth. For hundreds, maybe even thousands of years, the texts were passed on orally. There are four Vedas, 1. Rig-Veda is the oldest of the four vedas and consists of 1028 hymns praising the ancient gods. 2. Sama-Veda consists of chants and tunes for singing at the sacrifices. 3. Yajur-Veda is used as a handbook by priests performing the vedic sacrifices. 4. Atharva-Veda preserves many traditions which pre-date the Aryan influence and consists of spells, charms and magical formulae.'

¹² Ralph T.H. Griffith, 'Hymns of the Atharva Veda' <<http://www.sacred-texts.com/hin/av/avo3023.htm>> accessed 03 May 2024 - Book 3, Hymn 23 of Atharva-Veda contains charms and rituals to ensure the birth of a son.

¹³ Shakuntala Rao Shashtri, *Women in the Sacred Laws – Dharmasutras, Manusamhita etc* (3rd edn, Bharatiya Vidya Bhavan 1990) 17.

¹⁴ Gavin Flood, 'History of Hinduism' (*BBC*, 24 August 2009) <http://www.bbc.co.uk/religion/religions/hinduism/history/history_1.shtml> accessed 03 May 2024.

same, for example, widow remarriage was prohibited and society had also begun disapproving of inter-caste¹⁵ marriages.¹⁶ The ancient Hindu epic, Ramayana, believed to have been composed roughly around 5th century BCE, also sheds light on the undesirability of daughters in the society, in the following manner: 'a daughter's father, even if occupying a position as exalted as that of a king of gods, has to put up with insults not only from his equals but also from his inferiors.'¹⁷ It must be, however, mentioned that despite the dissatisfaction at the birth of a girl child, instances of female infanticide were rare in the Vedic period.¹⁸ But, during the Medieval period (500CE - 1500CE),¹⁹ female infanticide did take place within the Hindu society and by 18th century CE, the intentional killing of girl child had become a widespread problem in the Indian subcontinent.²⁰ One of the main reasons for an increase in female infanticide was that marriage was made compulsory for all Hindu girls at an early age, especially during and after the Post Vedic period and this view continued right till the end of the British rule in India. With marriage also came the custom of dowry i.e., 'gifts given during the marriage to the son-in-law or his parents either in cash or kind.'²¹ As a result, many families in order to escape the hardship of first taking care and later marrying their daughters, took to the practice of female infanticide as they saw their daughters as nothing more than a financial burden.²²

2. Hindu girls and Education

With respect to imparting education to young girls, it has been observed that, during the Vedic period (1500BCE - 500BCE), families did encourage young girls to take up Vedic studies.²³ Reference to terms like, Acharya and Upadhyayas, meaning women teachers, indicates that women enjoyed equal status as men in terms of not only receiving education but also had the opportunity to express their knowledge of the Vedas.²⁴ It must also be borne in mind that, education for females was generally limited to families who were well off both financially and socially in the society.²⁵ Knowledge of the Vedas and other sacred literature was considered a prerequisite for a maiden in order to secure a suitable match for marriage. During the Vedic period, girls could remain unmarried till the age of 15 or 16 and therefore they could continue their studies right before the time of their marriage.²⁶ It was only in the Post Vedic period (500BCE - 500CE) that young girls were prohibited from gaining access to education.²⁷ Coming back to the Vedic period, girl students for the purpose of education were divided into two classes namely, 'Brahmavadinis and Sadyodvahas, the former were lifelong students of theology and philosophy; the latter used to pursue their studies till their marriage at the age of 15 or 16.'²⁸ The Sadyodvahas, during the period of their studentship used to devote their time memorizing Vedic hymns, because firstly, these hymns formed an essential part of their daily prayers and secondly, they also played an important role in performing religious rituals and sacraments by both husband and wife post marriage.²⁹ The Brahmavadinis, on the other hand, used to achieve higher excellence in Vedic studies compared to the Sadyodvahas. Until the end of the Vedic period, besides the study of the Vedas, philosophical studies also attracted a large number of women. As noted by Altekar, 'despite being a difficult science, women took deep interest in the study of philosophy. Women, especially, were interested in discussing the diverse problems arising out of Vedic sacrifices.'³⁰ An important aspect of female education, worth mentioning at this juncture, is whether young girls were taught together with boys or were they taught separately. It is interesting to note that, despite there not being much objection regarding education of young girls, the literature on

¹⁵ K. Saroja, 'Intercaste Marriage and Social Dynamics in India: A Critique' (1999) 60(2) The Indian Journal of Social Work 183, 185.

¹⁶ A.S. Altekar, *The Position of Women in Hindu Civilization – From Prehistoric Times to the Present Day* (2nd edn, Motilal Banarsidass Indological Publishers 1959) 4.

¹⁷ Ibid 5.

¹⁸ Altekar, *The Position of Women in Hindu Civilization* (n 16) 7.

¹⁹ Flood, *History of Hinduism* (n 14).

²⁰ Altekar, *The Position of Women in Hindu Civilization* (n 16) 8; See also, Sheela Saravanan, 'Female Infanticide in India: A Review of Literature' (2002) 32(1-2) Social Change 58, 59.

²¹ Devika Monani and Felicity Gerry, 'Death and the Dowry System: India's Women and Female Children at Global Risk of Gendercide Over Money' (2017) 15(1) Issues in Legal Scholarship 1, 4.

²² Daniel J. R. Grey, 'Creating the "Problem Hindu": Sati, Thuggee and Female Infanticide in India, 1800–60' (2013) 25(3) Gender & History 498, 502.

²³ Julius Lipner, *Hindus: Their Religious Beliefs and Practices* (2nd edn, The Library of Religious Beliefs and Practices 2012) 115.

²⁴ Indra, *The Status of Women in Ancient India* (n 7) 132-136.

²⁵ Altekar, *The Position of Women in Hindu Civilization* (n 16) 14.

²⁶ Lipner, *Hindus* (n 23).

²⁷ Ibid.

²⁸ Altekar, *The Position of Women in Hindu Civilization* (n 16) 10.

²⁹ Ibid 11.

³⁰ Altekar, *The Position of Women in Hindu Civilization* (n 16) 11.

whether girls and boys were taught separately is inconsistent. It is therefore not possible to draw a conclusion as to this matter.³¹

In the Post Vedic period (500BCE - 500CE), education of young girls suffered as a result of being neglected, mostly, due to the custom of child marriage (this is further explained under section 3.3).³² Again, with the lowering of the marriage age for girls in later years, the prerequisite of having Vedic knowledge for marriage, was first reduced to a mere formality and later on declared totally unnecessary, which put an end to any opportunities of self-development for girls.³³ Because girls had to be married off at an early age, they were denied access to education. They were only seen as child-bearers with no other function.³⁴ This particular view further gained strength during the time of Manu,³⁵ which is roughly estimated to be around 100CE.³⁶ As per Manu, 'day and night women must be kept dependent by their menfolk, and if they become attached to worldly things they must be kept under one's control. Protected in childhood by her father, in youth by her husband, and in old age by her sons, a woman is not fit for independence.'³⁷ Manu also states that, marriage for girls is akin to them taking up Vedic studies; serving the husband is equivalent to studying at a school and doing household duties is a substitute for doing daily prayers.³⁸ With such views on women, there was a continuous deterioration in the position of women till the early 20th century CE.³⁹

It was only after the British Crown assumed responsibility of managing the Indian administration in 1858 that steps were taken to ensure the promotion of education among girls.⁴⁰ By virtue of the Age of Consent Act, 1891, the age of consent for girls was raised from ten to twelve years which brought sexual intercourse with unmarried and married girls below twelve years within the ambit of rape.⁴¹ The Age of Consent Act, 1891 was one of many legislative initiatives taken by the British to reform the Hindu society. The purpose behind the 1891 Act was to curb the practice of child marriage.⁴² The Child Marriage Restraint Act, 1929 was another example, where the marriageable age of girls was raised to 14 in order to promote education.⁴³ Although, there were efforts made in the direction of educating young girls by the British, the pace of such efforts was slow because of the close relationship between gender on one hand and caste, tribe, religion, class on the other. Here, it is important to understand that because of the patriarchal mindset prevalent in the society which was still opposed to educating girls along with the intersection of gender with other social factors, the changes made by the legislature during this period could not reach to all sections of women. In other words, societal values were to a great extent a hindrance in the progress of women during this time.⁴⁴ Consequently, by the time India became independent in 1947, only 9 percent of women were literate in the country.⁴⁵ Even today, as per the 2011 Census data, female literacy stands at only 65.46 percent when compared to male literacy of 82.14

³¹ Indra, *The Status of Women in Ancient India* (n 7) 134.

³² Lipner, *Hindus* (n 23) 116.

³³ Altekar, *The Position of Women in Hindu Civilization* (n 16) 16.

³⁴ Indra, *The Status of Women in Ancient India* (n 7) 142.

³⁵ Vasudha Narayanan, 'Hinduism' (*Britannica*) <<https://www.britannica.com/topic/Hinduism/The-Upanishads#ref303667>> accessed 03 May 2024 - 'Among the texts inspired by the Vedas are the Dharma-sutras, or "manuals on dharma," which contain rules of conduct and rites. The most important of these texts are the sutras of Gautama, Baudhayana, and Apastamba. The contents of these works were further elaborated in the more systematic Dharma-shastras, which in turn became the basis of Hindu law. First among them stands the Dharma-shastra of Manu, also known as the *Manu-smriti* (Laws of Manu). It deals with topics such as cosmogony, the definition of dharma, the sacraments, initiation and Vedic study, the eight forms of marriage, hospitality and funerary rites, dietary laws, pollution and purification, rules for women and wives, royal law, juridical matters, pious donations, rites of reparation, the doctrine of karma, the soul, and punishment in hell. The influence of the Dharma-shastra of Manu has been enormous, as it provided Hindu society with the basis for its practical morality.'

³⁶ Ibid.

³⁷ F. Max Müller, *The Laws of Manu* (1st edn, Motilal Banarsidass 1896) 327-328.

³⁸ Ibid 42.

³⁹ Altekar, *The Position of Women in Hindu Civilization* (n 16) 24-25.

⁴⁰ Padma Anagol-McGinn, 'The Age of Consent Act (1891) Reconsidered: Women's Perspectives and Participation in the Child-Marriage Controversy in India' (1992) 12(2) South Asia Research 100, 100.

⁴¹ Ibid.

⁴² Taisha Abraham (ed), *Women and the Politics of Violence* (1st edn, Har-Anand Publications 2002) 62.

⁴³ R. Kalaivani, 'Child Marriage Restraint Act (1929) – A Historical Review' (2015) 4(1) International Journal of Humanities and Social Science Invention 14, 17.

⁴⁴ Abraham, *Women and the Politics of Violence* (n 42).

⁴⁵ Ministry of Women and Child Development New Delhi, 'Report of the High Level Committee on the Status of Women in India vol 3' (*Government of India*, June 2015) 697, 758 <<https://wcd.nic.in/sites/default/files/Vol%203.compressed.pdf>> accessed 03 May 2024.

percent.⁴⁶ As per a report by the Ministry of Women and Child Development, Government of India, the historical exclusion of women from education is one among many reasons responsible for the gap between male and female literacy rate in modern India.⁴⁷

In light of the discussion on the general view of Indian society with respect to birth of girls and their education, it can be said that, from the early days, society has had an unfavourable view of women.

3. Hindu girls and Marriage

This section will, first, give a brief overview of the concept of Hindu marriage and then examine the issues around the marriageable age for girls.

3.1 Concept of Hindu Marriage

The institution of marriage was not only well established during the Vedic period (1500BCE - 500BCE) but it was also considered as a social and religious duty. In other words, marriage was regarded a necessity without which life and personality of a person was incomplete.⁴⁸ Hindu marriages, have been from ancient times, performed according to the customary rituals and ceremonies practiced by the bride's and the groom's family. One of the most important rituals in a Hindu marriage is Saptapadi i.e., taking seven steps around the sacred fire by the bride and the groom only after which a marriage is said to be complete.⁴⁹

As per the view in the Vedic period, a man was considered unholy, if he did not have a wife and children. Further, bachelors were considered inferior to married men and those with children were considered more fortunate than those without.⁵⁰ Though, marriage was regarded highly desirable for both men and women, there was no compulsion to get married, at least, till the end of the Vedic period.⁵¹ From the Post Vedic period (500BCE - 500CE), marriage was seen as a 'religious sacrament'⁵² in which a man and a woman are bound in permanent relationship for the physical, social and spiritual purposes of dharma,⁵³ procreation and sexual pleasure.⁵⁴ Marriage had become an obligation, especially for girls. The general view with respect to marriage of girls was that, an unmarried girl has to face 'great difficulties' in life when compared to a married girl. She needed to be protected from the hardships of a lonely life and it was only through marriage that she could be saved.⁵⁵ According to one ancient Hindu text, 'the corpse of a maiden can be burnt only after a formal marriage even after the death.'⁵⁶ The epic Mahabharata, believed to have been composed around 8th century BCE, also, emphasized upon the necessity of marriage for girls.⁵⁷

In the present-day context, not much has changed with respect to the concept of Hindu marriage. Hindu marriage is still considered to be a sacrament; however, the performance of rituals has slowly begun to lose importance for the two parties.⁵⁸ But, a limited change (limited because despite legal reforms practices such as child marriage continue even today in India) in ancient Hindu traditions is certainly seen with respect to conducting of marriages. This change has been brought as a result of various legal reforms around child marriage and widow remarriage that took place after India's independence.⁵⁹

3.2 Age for Marriage

⁴⁶ Aarti Dhar, 'Significant Boost in Literacy: 2011 Census' *The Hindu* (New Delhi, 31 March 2011) <<http://www.thehindu.com/news/national/Significant-boost-in-literacy-2011-census/article14968639.ece>> accessed 03 May 2024.

⁴⁷ Ministry of Women and Child Development, Report of the High Level Committee vol 3 (n 45).

⁴⁸ Monmayee Basu, *Hindu Women and Marriage Law: From Sacrament to Contract* (1st edn, Oxford University Press 2000) 22.

⁴⁹ Ibid.

⁵⁰ Altekar, *The Position of Women in Hindu Civilization* (n 16) 32.

⁵¹ Raghunath Ghosh, *Facets of Feminism: Studies on the Concept of Women in Indian Tradition* (1st edn, Northern Book Centre 2005) 50.

⁵² Neelam Singh, 'Women and Hindu Marriage' (2014) 9(1) *Vidhigya: The Journal of Legal Awareness* 62, 65 - 'The sacramental marriage among Hindus has three characteristics: It is a permanent, indissoluble union and it is a holy union.'

⁵³ Shashtri, *Women in the Sacred Laws* (n 13) 13 - 'In the whole range of Sanskrit literature 'Dharma' is one of the few words with a comprehensive meaning. It is a word that means variously: sacred law, duty, justice and religious merit. It also denotes any act which can give heavenly bliss and ultimate liberation to the human soul.'

⁵⁴ Madhumita Acharjee and Fakhrul Islam Choudury, 'Marriage as a Sacrament and as a Contract' 2(II) *International Journal of Socio-Legal Analysis and Rural Development* 27, 28.

⁵⁵ Altekar, *The Position of Women in Hindu Civilization* (n 16) 33.

⁵⁶ Ibid.

⁵⁷ Altekar, *The Position of Women in Hindu Civilization* (n 16) 33.

⁵⁸ Julia Leslie, *Roles and Rituals for Hindu Women* (1st edn, Pinter 1991) 67.

⁵⁹ Basu, *Hindu Women and Marriage Law* (n 48).

In the Vedic period (1500BCE – 500BCE), girls were married at the age of 15 or 16.⁶⁰ There are references to girls marrying late in life and also of unmarried girls who stayed with their parents.⁶¹ It is believed that, during this period, there were no instances of pre-puberty marriages.⁶² Pre-puberty marriages only gained a firm footing in society after the end of the Vedic period.⁶³ In the early Post Vedic society, although, the view with respect to lowering of the marriageable age of girls was divided, there was enough evidence to show society's inclination towards pre-puberty marriages.⁶⁴ The debate around lowering of the marriageable age did come to an end during the end of the Post Vedic period with society largely agreeing in favour of pre-puberty marriages.⁶⁵ To understand why the popularity of pre-puberty marriages went on increasing during the Post Vedic period, it is necessary to pay attention to the writings of different Hindu texts about the desirable age for marriage. According to Yajnavalkya,⁶⁶ author of Yajnavalkya Smriti (300CE - 500CE), 'girls should be married before the age of puberty; otherwise, every month their guardians will be guilty of the destruction of an embryo.'⁶⁷

Manu, on the other hand, stated that, a father can wait up to three years after his daughter has attained puberty before giving her away for marriage, but, if he finds a handsome suitor before that period, he can marry his daughter before she attains puberty.⁶⁸ Brihaspati,⁶⁹ lays down another condition with respect to age of girls during the Post Vedic period, wherein, he says that, 'if the age of man at the time of marriage be thirty or twenty one, then the age of the girl should be ten or seven respectively.'⁷⁰ From the writings during the Post Vedic period, it can be argued that, ensuring absolute chastity of girls prior to marriage was the main reason for performing pre-puberty marriages because any comment on the character of a young girl prior to marriage was believed to have caused an attack on 'honour' of the family thereby making it difficult for that family to find a good suitor. Under honour killing, interaction between girls and boys before marriage are rarely tolerated and therefore, movement of girls are always monitored by family members fearing tarnishing of the family name by 'actions' of girls which may raise questions about their character. It is however, difficult to pin-point a particular time period in history that can be held solely responsible for the present day violence against women, say, honour killing, still, the influence of religious texts and the practices of the Vedic period cannot be denied in this matter.⁷¹ With reduction in the age for marriage, young girls were also denied education because parents did not want to take the risk of losing a good suitor by allowing daughters to 'waste away' years on education.⁷² Further, society believed that, if a girl is married at a young age, then, she will have plenty of time to know about the likes and dislikes of her in-laws and more importantly, of her husband's. She will have the opportunity to correct herself from a tender age and gain the affection of her new family. As a result of such views, society became increasingly conscious of the 'advantages' of pre-puberty marriage for girls and ignorant towards any possible drawbacks.⁷³

Society's inclination towards pre-puberty marriages continued during and after the Medieval period. During the 16th century CE, boys and girls were being married at an early age of 10 and 6 respectively.⁷⁴ Prior to the British rule, the marriageable age for girls was only 8 or 9.⁷⁵ It was only by the beginning of the 20th century

⁶⁰ Altekar, *The Position of Women in Hindu Civilization* (n 16) 49.

⁶¹ Indra, *The Status of Women in Ancient India* (n 7) 42.

⁶² Ibid - 'According to the Rigveda, a maiden must be fully developed physically and intellectually in her father's home before, the marriage could even be thought of.'

⁶³ Basu, *Hindu Women and Marriage Law* (n 48) 32.

⁶⁴ Altekar, *The Position of Women in Hindu Civilization* (n 16) 54 - 'Some thinkers pointed out that life was transitory, and if marriage was intended to ensure the continuance of the family, the bride should not be too young when it is performed. Others contended that absolute chastity was to be most desired, and so we should select a bride, who should not have even dreamt of sexual love.'

⁶⁵ Ibid 55.

⁶⁶ 'Yajnavalkya: Indian Sage' (*Britannica*) <<https://www.britannica.com/biography/Yajnavalkya>> accessed 03 May 2024 - 'Yajnavalkya, sage and teacher figures prominently in the earliest of the Hindu philosophical and metaphysical texts known as the Upanishads.'

⁶⁷ Indra, *The Status of Women in Ancient India* (n 7) 46.

⁶⁸ Ibid 47.

⁶⁹ Roshen Dalal, *The Religions of India: A Concise Guide to Nine Major Faiths* (1st edn, Penguin Books 2010)

71 - 'Brihaspati is also a rishi or sage. In the later Vedas, he is known as a purohita or priest.'

⁷⁰ Indra, *The Status of Women in Ancient India* (n 7) 47.

⁷¹ Rai Bahadur Sirsa Chandra Vidyarnava (tr), *The Sacred Book of the Hindus Volume XXI* (1st edn, Allahabad Panini Office Publisher 1918) 91; See also, David E. Bloom and P.H. Reddy, 'Age Patterns of Women at Marriage, Cohabitation and First Birth in India' (1986) 23(4) *Demography* 509, 511.

⁷² Altekar, *The Position of Women in Hindu Civilization* (n 16) 16.

⁷³ Ibid 60.

⁷⁴ J. N. Dasgupta, *Bengal in the 16th Century* (1st edn, Vintage Books 1996) 131.

⁷⁵ Altekar, *The Position of Women in Hindu Civilization* (n 16) 61.

CE, that, the need for deferring the age for marriage began to be advocated. Economic struggle is said to be one of the main reasons behind the increase of the marriageable age. With only one male earning member, it had become quite difficult for most middle-class families to manage their budget. This led to families allowing girls to study and seek employment opportunities.⁷⁶ In addition, the introduction of western ideas that set in motion the process of emancipation of women, led to passing of legislations such as, the Age of Consent Act, 1891 and the Child Marriage Restraint Act, 1929, that were seen as a major step taken during the British rule to put an end to child marriage.⁷⁷

The brief historical account, so far, has brought forth the significance of Hindu religious texts, practices, customs in shaping the structure of the society along with raising questions with respect to whether or not there was any scope for allowing transformation during this period in the social structure of the Indian society, especially, with regard to women. Although, legislative initiatives were taken on issues of education and marriage during the British rule, these reforms were limited in their application because of deep rooted gender bias prevalent in society that prevented the benefit of these reforms to reach all sections of women. The following section on conditions for marriage, married life, divorce and property rights will shed further light on the rigid nature of the Hindu society and its overall structure.

3.3 Hindu girls and Conditions for Marriage

Wealth, beauty, health, intelligence and status of the family were some of the main considerations in the selection of the bride and the groom during the Vedic period.⁷⁸ Brides, in the Vedic period (1500BCE – 500BCE), were fully matured and grown up at the time of marriage. The Vedic literature indicates that the girl to be married was not immature, but was a youthful maiden, capable of bearing an offspring.⁷⁹ In so far as qualifications of the groom are concerned, he should have attained maturity and should be in a position to protect his wife and fulfill all her expectations. A poor man or a man who was not intelligent or was not regarded as a wise person found it difficult to get married.⁸⁰ A dumb, deaf, blind or lame person was considered undesirable for marriage.⁸¹ As mentioned earlier, women in the Vedic period had equal opportunities along with men for intellectual, moral, spiritual and cultural development. They actively participated with men in debates, religious ceremonies and social life. They also had the right to perform Vedic rituals by themselves. In short, the Vedic period placed men and women almost on an equal footing.⁸²

During the earlier part of the Post Vedic period (500BCE - 500CE), the characteristics of the bride were given more importance than the groom.⁸³ The Grihya Sutra,⁸⁴ provides a detailed account with respect to the qualities in a bride.⁸⁵ A girl with good external signs was preferred for marriage with beauty being the most important characteristic.⁸⁶ It is important to note that, the main purpose of marriage, according to the Hindus, was the procreation of children and a woman was supposed to have 'good qualities' which would ensure the birth of healthy male child.⁸⁷ In relation to the characteristics for the bridegroom, not much has been documented; however, men who suffered from disease, who belonged to another caste, who suffered from consumption, or a man of the same gotra⁸⁸ were all considered undesirable for marriage. But, in some cases,

⁷⁶ Ibid 62.

⁷⁷ Kalaivani, Child Marriage Restraint Act (1929) (n 43).

⁷⁸ Raj Pruthi, *Vedic Civilization* (1st edn, Discovery Publishing House 2004) 98.

⁷⁹ Usha M. Apte, *The Sacrament of Marriage in Hindu Society from Vedic Period to Dharmasastras* (1st edn, Ajanta Publications 1978) 49.

⁸⁰ Ibid 50.

⁸¹ Altekar, *The Position of Women in Hindu Civilization* (n 16) 73.

⁸² Pruthi, *Vedic Civilization* (n 78) 100.

⁸³ Dwarka Nath Mitter, *Position of Women in Hindu Law vol 2* (1st edn, Cosmo Publications 2006) 457.

⁸⁴ 'Grihya-sutra' (*Britannica*) <<https://www.britannica.com/topic/Grihya-sutra>> accessed 04 May 2024 - 'The *Grihya-sutras* describe the ceremonies that mark each stage of an individual's life, from the moment of conception to the final death rites.'

⁸⁵ Apte, *The Sacrament of Marriage in Hindu Society* (n 79) 72 - 'The bridegroom should avoid one who has been given to another. He should avoid one who looks wicked and one who has defective limbs. He should also not select a girl of monstrous appearance. A bald headed girl and a girl who has gone over to another family should also be avoided. A girl who has many friends should not be selected. A girl who has fine looking younger sister or whose age is too near to that of the bridegroom is not to be approved.'

⁸⁶ Ibid.

⁸⁷ Apte, *The Sacrament of Marriage in Hindu Society* (n 79) 75.

⁸⁸ 'Gotra: Indian Caste System' (*Britannica*) <<https://www.britannica.com/topic/gotra>> accessed 04 May 2024 - 'Gotra, lineage segment within an Indian caste that prohibits intermarriage by virtue of the members descent from a common mythical ancestor, an important factor in determining possible Hindu marriage alliances. The practice of forbidding marriage between members of the same *gotra* was

if a girl had attained puberty, she was even married to a man who was poor or had no Vedic knowledge or any of the desired qualities, in order to lessen the father's 'burden'.⁸⁹ The Grihya Sutra, also, makes a clear reference to an important aspect of Hindu marriage i.e., prohibition of marriage between persons of the same gotra.⁹⁰ The rules relating to marriage in the later part of the Post Vedic period continued to be in the same state as of the earlier period. It was believed that, a man who is not married has not fully perfected his personality and must be regarded as incomplete and imperfect.⁹¹

With regard to the qualities of a girl to be given in marriage, there is a mention about the characteristics of an 'ideal girl' (mostly relating to physical features) during this period. For example, a girl whose limbs are not too fat or too thin, too short or too long are some of the features of an 'ideal girl'.⁹² There were also certain categories of women who could not be given in marriage during this period. According to the Manusmriti, 'women who are sapindas⁹³ of the Hindu man on his mother's side, or women who are related to the groom on his father's side of the family; those who suffer certain specified diseases; women named after constellations or women who have 'fear-inducing names'; who belong to families which do not follow Vedic rituals; women who are named after rivers and women who are named after trees could not be married.'⁹⁴ Although, Manusmriti is considered as the most authoritative book of the Hindu code,⁹⁵ neither the original Sanskrit text of Manusmriti nor its translated versions contain an apt explanation of the many verses in the book, thereby making it difficult to explain certain terms or phrases. A possible reason for there not being an explanation is that scholars have tried not to alter the meaning of the word or phrase while translating and only focused on reproducing what has been said in another language. Therefore, when the Manusmriti uses phrases such as, 'women named after constellations' or 'women who have fear-inducing names' it is quite difficult to ascertain the true meaning behind the use of such phrases.

Another important aspect of Hindu marriage i.e., caste, only became a barrier in the Post Vedic period when it came to the selection of the bride and bridegroom.⁹⁶ During the Vedic period, 'anuloma marriages' i.e., marriages between men of higher caste and women of lower caste were known and permissible, though they may not have been very common. Later, during the Post Vedic period, inter-caste marriages though tolerated, were not encouraged. The general rule was to marry a girl of the same caste.⁹⁷ With regard to 'pratiloma marriages' i.e., marriage between male of lower caste and a female of higher caste, the opinion was that such marriages should be discouraged as it would 'pollute' the caste hierarchy.⁹⁸

Hence, with regard to the selection of the bride and the bridegroom, it can be safely assumed that right from the beginning of the ancient period there was no single important factor (wealth, beauty, health, intelligence, status of the family) that could claim superiority over the other. As noted above, by the end of the Post Vedic period, a number of factors were being considered for the selection of the bride and the bridegroom.

3.4 Married life

After describing some of the necessary conditions required for a Hindu marriage, this section will first draw attention to the treatment which the bride received in her new home. More importantly, emphasis will be laid upon her duties in the household and the relationship between her and her husband. Subsequently, this section will also refer to the debate around divorce and widowhood.

intended to keep the *gotra* free from inherited blemishes and also to broaden the influence of a particular *gotra* by wider alliances with other powerful lineages.'

⁸⁹ Apte, *The Sacrament of Marriage in Hindu Society* (n 79) 77.

⁹⁰ Ibid.

⁹¹ Altekar, *The Position of Women in Hindu Civilization* (n 16) 32; See also, Justice M. Rama Jois, *Ancient Indian Law: Eternal Values in Manusmriti* (1st edn, Universal Law Publishing 2004) 40.

⁹² Srikanta Mishra, *Ancient Hindu Marriage Law and Practice* (1st edn, Deep & Deep Publications 1994) 30.

⁹³ The Hindu Marriage Act 1955, s 3(f)(i) - 'Sapinda relationship with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation; (ii) two persons are said to be "sapinda" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them.'

⁹⁴ Mishra, *Ancient Hindu Marriage Law and Practice* (n 92).

⁹⁵ Narayanan, 'Hinduism' (n 35).

⁹⁶ Rajendra K. Sharma, *Indian Society, Institutions and Change* (1st edn, Atlantic Publishers & Distributors 2004) 116.

⁹⁷ J. Bheemaiah, 'Dialectics of Caste Culture: A Social Crisis in Indian Nation' (International Conference on Social Science and Humanity, Singapore, 2011) 454, 455 <<http://www.ipedr.com/vol5/no2/101-H10246.pdf>> accessed 04 May 2024.

⁹⁸ Ibid.

During the Vedic period (1500BCE – 500BCE), brides received respect and affection in their new homes.⁹⁹ Since, one of the main purposes of marriage was procreation, which was considered the main responsibility of women, they were considered important as wives and begetters of sons.¹⁰⁰ During this period, post marriage, the bride had the final say on matters concerning her new household.¹⁰¹ After marriage, she took the reins of the household from the elderly and looked after the other members of the family. In other words, she had supreme authority within the house.¹⁰² In the Vedic period, a woman was considered an exceptional housewife, when it came to performing her duties and responsibilities in the household.¹⁰³ Above all, treatment of the bride in the Vedic period was based upon the recognition of the fact that the husband is identical with the wife in every aspect and vice-versa.¹⁰⁴

But the position of women in the household slowly began to change towards the end of the Vedic period. The notion of an 'ideal housewife' took a more concrete shape towards the beginning of the Post Vedic period (500BCE – 500CE), which becomes clearer, especially, from the writings of some of the epics, such as, the Mahabharata.¹⁰⁵ During the Post Vedic period, when pre-puberty marriages became the order of the day, the treatment which was given to women in their new homes began to change. Because the brides were young and illiterate, they became more susceptible to ill-treatment at home. In short, marriage, during this period, established the supremacy of the husband over the wife.¹⁰⁶ The idea of subordination of wife also finds support in the ancient Hindu literature during this period. According to Manu, 'women only have a place of dependence in the household. She must be kept in subordination, day and night, by the males of the family. In household affairs she is so much subservient to her husband that her very individuality is submerged in that of her lord's.'¹⁰⁷

The subordination of women continued during the Medieval period (500CE - 1500CE) with similar reasons at play i.e., since women were considered to be weak, dishonest, unfaithful they had to be guarded and controlled by their husbands at all times.¹⁰⁸ As noted earlier, due to the legislative efforts made during the British rule, some progress resulting in the emancipation of Hindu women was made, especially on issues of education and child marriage (the Age of Consent Act, 1891 and the Child Marriage Restraint Act, 1929). However, these efforts were only a legal solution to the problem and therefore limited in their application because they lacked support from the wider society which refused to give up patriarchal values.¹⁰⁹ The condition of women in the household as described above, depicts a fairly straightforward picture of marital expectations under Hinduism. The marital expectations, for both men and women appear to be solely based on their gender and not their individuality. In summary, the condition of women in the household brings to light the degree of interdependence among individuals especially in their relationships and the influence of religious customs and traditions in one's personal life.

3.5 Divorce and Widowhood

As noted earlier, marriage under Hinduism was seen as a sacrament and not a contract during the Vedic period (1500BCE - 500BCE).¹¹⁰ The institution of marriage was held to be a permanent and an indissoluble union.¹¹¹ Upon marriage, the wife transferred herself both bodily and spiritually to her husband by severing all ties with her own parents. In short, she became part of the husband's family after marriage.¹¹² The wife considered her husband to be god and was devoted to him all her life. She was seen as one half of the body of her husband,

⁹⁹ Indra, *The Status of Women in Ancient India* (n 7) 22 - 'In the Rigvedic time, we find the home well-established, with the father as patriarch, possessing complete control over the house-hold, where the centre was primarily the woman-the very embodiment of that great moral and spiritual force, that ultimately worked itself out in the creation and development of modern civilized society.'

¹⁰⁰ Jaya S. Tyagi, 'Hierarchical Projections of Women in the Household: Brahmanical Perceptions Recorded in the Early "Grhyasutras" c.800-500 B.C.' (2004) 32(5/6) *Social Scientist* 3, 14.

¹⁰¹ Altekar, *The Position of Women in Hindu Civilization* (n 16) 94.

¹⁰² Ibid.

¹⁰³ Leslie, *Roles and Rituals for Hindu Women* (n 58) 57.

¹⁰⁴ Müller, *The Laws of Manu* (n 37) 335.

¹⁰⁵ Indra, *The Status of Women in Ancient India* (n 7) 30 - 'That wife who, even when addressed harshly and looked upon with angry eyes by her husband, appears cheerful to him, is said to be truly devoted to her husband. She who does not cast her eyes upon the moon or the sun or a tree that has a masculine name, who is worshipped by her husband and who is gifted with beautiful features, is considered to be truly righteous lady.'

¹⁰⁶ Lipner, *Hindus* (n 23) 116.

¹⁰⁷ Indra, *The Status of Women in Ancient India* (n 7) 31-32.

¹⁰⁸ Biren Bonnerjea, 'The Hindu Family' (1930) 3(1/2) *Primitive Man* 3, 17-18.

¹⁰⁹ Kalaivani, *Child Marriage Restraint Act (1929)* (n 43).

¹¹⁰ Singh, *Women and Hindu Marriage* (n 52).

¹¹¹ Ibid.

¹¹² Shashtri, *Women in the Sacred Laws* (n 13).

equally participating in all of his acts. Besides, even after the death of the husband, the wife was perceived as the surviving half of her husband. Hence, even death could not dissolve the sacred union between a husband and wife.¹¹³ Since, the institution of marriage during the Vedic period was seen as a permanent union of two souls, the wife was not allowed to remarry after the death of the husband. Further, there was no scope for divorce during the lifetime of the husband.¹¹⁴

Though, the Vedic Hindu society, firmly believed that the sacred tie of marriage could not be undone, divorces were allowed in small numbers even before the beginning of the Common era (but there is some confusion with respect to the exact period among scholars regarding this particular issue).¹¹⁵ Divorces and remarriages even continued to take place during the earlier part of the Post Vedic period (500BCE - 500CE) among the higher sections of the Hindu society.¹¹⁶ However, after the Post Vedic period, divorce was only practiced among the lower sections of the Hindu society, Shudras¹¹⁷ and other lower castes.¹¹⁸ Due to the growing influence of ascetic ideals in the Hindu religion during the early years of the Common era, opposition to divorce and remarriage grew stronger and stronger among the higher class.¹¹⁹ As per Altekar, 'society began to hold that a girl could be given in marriage only once. To divorce one husband and to marry another, because the marital life was not happy, began to appear as a grossly sensual procedure. Society, therefore, held that even if the husband were a moral wreck, or were grievously ill-treating his wife, the latter could not claim any relief by way of divorce.'¹²⁰

On the issue of widowhood, until the beginning of the Post Vedic period, the position of the widow was satisfactory due to remarriage being common. A widow could contract a second marriage and therefore, not lead a life of celibacy.¹²¹ But, in the Post Vedic period, the position of the widow gradually began to decline, primarily due to the custom of Sati,¹²² which was slowly being accepted as an 'ideal way of ending marriage'¹²³ among the higher class.¹²⁴ As mentioned earlier, during the Post Vedic period, remarriage had become unpopular due to greater influence of ascetic views.¹²⁵ Thus, widows who continued to live after their husbands' death had to live a difficult life; they were seen as women who were both sexually and socially dead but only physically alive.¹²⁶ Because, of a widow's sexual and social non-existence, she was prohibited from indulging in any activity that was believed to be sensually arousing and was even barred from seeing men.¹²⁷ Widows were considered inauspicious. They were made to stay separate from other members of the household and given a distinctive appearance.¹²⁸ In brief, 'a widow divests herself of all physical attractiveness by shaving her head and removing the auspicious signs of married status; she no longer wears colored garments, uses perfume, or sleeps on a bed; and she must adhere to a restricted diet by eating only one meal a day of those foods considered benign and pure and undertaking frequent fasts.'¹²⁹ Further, according to most ancient Hindu literature during this period, as a general rule, a girl could only be given once in marriage and there was no scope for remarriage. It was believed that, allowing a woman to remarry after the death of the husband will

¹¹³ S. Pothan, 'Divorce in Hindu Society' (1989) 20(3) Journal of Comparative Family Studies 377, 377.

¹¹⁴ Indra, *The Status of Women in Ancient India* (n 7) 87-88 - 'After a marriage was consummated, no dissolution was ever imaginable. Even after the death of her husband, a wife was supposed to be linked with his soul and hence she was under an obligation to lead a life of pious widowhood, always meditating upon the virtues of her departed partner.'

¹¹⁵ Altekar, *The Position of Women in Hindu Civilization* (n 16) 84 - 'The Atharvaveda in one place refers to a woman marrying again, very probably in the lifetime of her husband. Her second marriage of course presupposed a divorce.'

¹¹⁶ Ibid 84-85.

¹¹⁷ 'Shudra: Hindu Class' (*Britannica*) <<https://www.britannica.com/topic/Shudra>> accessed 04 May 2024 - 'Shudra, also spelled Sudra, the fourth and lowest of the traditional *varnas*, or social classes, of India, traditionally artisans and labourers.'

¹¹⁸ Altekar, *The Position of Women in Hindu Civilization* (n 16) 85-87.

¹¹⁹ Ibid 86.

¹²⁰ Altekar, *The Position of Women in Hindu Civilization* (n 16) 86.

¹²¹ Indra, *The Status of Women in Ancient India* (n 7) 96.

¹²² Dorothy Stein, 'Burning Widows, Burning Brides: The Perils of Daughterhood in India' (1988) 61(3) Pacific Affairs 465, 466.

¹²³ Indra, *The Status of Women in Ancient India* (n 7) 115.

¹²⁴ Stein, *Burning Widows, Burning Brides* (n 122).

¹²⁵ Altekar, *The Position of Women in Hindu Civilization* (n 16) 86.

¹²⁶ Uma Chakravarti, 'Social Pariahs and Domestic Drudges: Widowhood among Nineteenth Century Poona Brahmins' (1993) 21(9/11) Social Scientist 130, 137.

¹²⁷ Lynn Teskey Denton, *Female Ascetics in Hinduism* (1st edn, State University of New York Press 2004) 43.

¹²⁸ Indra, *The Status of Women in Ancient India* (n 7) 100.

¹²⁹ Denton, *Female Ascetics in Hinduism* (n 127).

lead to corruption of the social values in the society.¹³⁰ The condition of Hindu widows remained more or less same until 1856; wherein for the first time a law was passed which legalized the marriage of Hindu widows.¹³¹ The Hindu Widows Remarriage Act, 1856 removed the legal obstacles to the marriage of Hindu widows, thereby, prohibiting enforced widowhood.¹³² But, it is difficult to ascertain, due to lack of literature, whether legislative reforms by the British were able to bring about any social, cultural change in the lives of Hindu women during this period.

The condition of Hindu widows only restates the role played by Hindu religious texts, practices, customs in shaping the structure of the society. The discussion so far, brings to light the significance of gender and the role it plays in defining an individual and what place that individual holds in the Hindu society. For example, there is a marked contrast in the case of men who have become widowers as compared to women who have lost their husbands. According to Manu, 'a man is allowed to marry the moment he performs the last rites of his wife but the same is not allowed for a woman whose husband has died.'¹³³ The discussion, therefore, on the social status of Hindu women with respect to education and marriage clearly shows that gender has been used as a basis for discrimination and that it also intersects with other forms of discrimination and hierarchical positions such as caste or class, to the detriment of women by portraying them as weak, unfaithful and dishonest.

3.6 Property Rights Daughter's Right to Inheritance

During the early part of the Vedic period, it was not possible for girls to either own property or have any share in the family property. In short, they had no right of inheritance.¹³⁴ Nevertheless, in the later part of the Vedic period, daughters were first among the female heirs to inherit property, provided they had no brothers in the family. The general rule was that a son was entitled to receive a share in the family property but not the daughter.¹³⁵ If a girl remained unmarried throughout her life either by choice or because of certain reasons (if the girl was having a disease etc.) she was allowed to have a share in her father's property. But, generally, daughters got married and therefore were not allowed a share in their paternal families' property.¹³⁶ During the Post Vedic period when marriage became compulsory for girls, only their marriage expenses were paid from the family property. In the absence of the father, the son was duty bound to bear the expense of the marriage out of the family property. But, a daughter could not claim a share in her father's property after marriage.¹³⁷ Hence, as per the general opinion of the ancient Hindu society, daughters were incapable of holding property and could only do so in certain situations i.e., if they remained unmarried or in the absence of a brother.¹³⁸

Property Rights of the Wife

Upon marriage, women could only own movable property, called Stridhana¹³⁹ (woman's separate property), which was given to her as a gift by the father, mother, brother or husband or received by her at the time of marriage. This included items such as ornaments and clothes.¹⁴⁰ On the issue of women's right of ownership (ownership is used here with reference to the right of enjoyment of property) vis a vis Stridhana, the opinion during ancient times was that women should not be allowed independence as regards disposing of her property.¹⁴¹ But, as a result of the division of Stridhana into two distinct categories, the absolute prohibition on disposition of property came to an end. Stridhana was divided into: '1) the Sauadayaika, which she received as gifts from relatives of both sides (parents and husband), over which she had full rights of disposal, and 2) the non-Sauadayaika which included gifts from strangers and property acquired by her as a married woman, over which she had no right of alienation without the consent of her husband. Her husband also had the power to

¹³⁰ Müller, *The Laws of Manu* (n 37) 335.

¹³¹ Emmanuel Janagan Johnson and Shyamala, 'Widow Remarriage: A New Dimension of Social Change in India' (2012) 2(3) International Journal of Humanities and Social Sciences 195, 197.

¹³² Law Commission of India, 'Eighty First Report: Hindu Widows Remarriage Act, 1856' (*Government of India Ministry of Law*, 20 December 1979) 1, 3 <<https://lawcommissionofindia.nic.in/51-100/report81.pdf>> accessed 04 May 2024.

¹³³ Müller, *The Laws of Manu* (n 37) 198.

¹³⁴ Debarati Halder and K. Jaishankar, 'Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India' (2008) 24(2) Journal of Law and Religion 663, 665.

¹³⁵ Altekar, *The Position of Women in Hindu Civilization* (n 16) 236.

¹³⁶ Indra, *The Status of Women in Ancient India* (n 7) 161.

¹³⁷ Ibid 163.

¹³⁸ Halder and Jaishankar, Property Rights of Hindu Women (n 134) 664.

¹³⁹ Altekar, *The Position of Women in Hindu Civilization* (n 16) 217.

¹⁴⁰ Halder and Jaishankar, Property Rights of Hindu Women (n 134).

¹⁴¹ Altekar, *The Position of Women in Hindu Civilization* (n 16) 223.

use it.¹⁴² Regardless of the distinction, the husband could still take control of the wife's property (Sauadayika) citing extreme necessity. Extreme necessity is broadly understood to mean the following, 'in a famine, for the preservation of the family or at a time when a religious duty must indispensably be performed or in illness the husband being destitute of other funds can take his wife's property and is not liable to restore it.'¹⁴³ In addition, the wife's subordination to her husband in relation to enjoyment of property is also evidenced from the fact that a wife was not allowed to make any expenditure either out of the family property or from her own property i.e., Stridhana without the permission of her husband.¹⁴⁴

Widow's Right to Inheritance

As noted in the previous section, society was not in favour of women holding property. The wife had only limited rights over the family property when compared to the husband. Hence, as expected, a widow's right to inherit her husband's property was also not recognized.¹⁴⁵ Society was very reluctant in recognizing a widow as the sole heir of the husband's estate and therefore only accorded her a limited right at least indirectly as a guardian to their minor sons. Further, in the absence of a son, the property went to the nearest male relative of the husband but not to the widow. Therefore, until the end of the Post Vedic period, a widow was only allowed a limited right over the husband's estate.¹⁴⁶ The Medieval period (500CE - 1500CE), further cemented male dominance over the property rights of Hindu women by encouraging the practice of transferring only limited ownership on widows to protect ancestral property. During this period, young widows were forced to transfer the succession rights to the nearest male member of the husband's family and after that were left to live a life of hardship.¹⁴⁷ It was during the British rule, that the first step towards making a uniform law of succession for Hindu women was taken in the form of The Hindu Women's Right to Property Act, 1937.¹⁴⁸ This Act was the first of its kind because 'it established Hindu women's rights over landed properties inherited from male owners, especially from husbands, even though to a limited extent.'¹⁴⁹ However, one of the major criticisms of the Act was that it granted to the widow only a limited right over the enjoyment of the husband's estate and also failed to guarantee any rights to widows when the deceased husband had already disposed of the property by way of a will.¹⁵⁰

After a brief account of the status of Hindu women and the general opinion about them during the different time periods of Indian history, the next section highlights the fundamental changes that took place especially in the lives of Hindu women soon after the Constitution of India came into force in 1950. More importantly, the following section focuses on whether or not the religious assumptions, beliefs, practices prevailing in the society from ancient times that discriminated against women were overturned in post-colonial India.

4. Hindu Women in Post-Colonial India: Safeguards under the Constitution

The process of drafting the Indian Constitution began in 1946 with an aim of creating a democratic model that was inclusive in nature.¹⁵¹ The constituent assembly understood that this would not be an easy task as creating a democratic model based upon equality and justice would require balancing gender, caste, religion, traditions, minorities etc. In the words of Hansa Mehta, Member, Constituent Assembly, 'forging this democracy would require social, political and economic justice for women.'¹⁵² Hence, the mission in front of the constituent assembly was to reach the best possible compromise that created a space where persons belonging to different social, cultural, religious groups could live with dignity.¹⁵³ On the issue of safeguarding the rights of women, the assembly on the recommendation of the Fundamental Rights Committee, included key provisions in its draft under the Fundamental Rights chapter as justiciable rights that guaranteed equality between the sexes.¹⁵⁴

¹⁴² Halder and Jaishankar, Property Rights of Hindu Women (n 134) 669.

¹⁴³ Indra, *The Status of Women in Ancient India* (n 7) 179.

¹⁴⁴ Anjani Kant, *Women and the Law* (1st edn, APH Publishing 2003) 342.

¹⁴⁵ Mytheli Sreenivas, 'Conjugality and Capital: Gender, Families, and Property under Colonial Law in India' (2004) 63(4) *The Journal of Asian Studies* 937, 940; See also, Sukumari Bhattacharji, 'Economic Rights of Ancient Indian Women' (1991) 26(9/10) *Economic and Political Weekly* 507, 509.

¹⁴⁶ Sreenivas, *Conjugality and Capital* (n 145).

¹⁴⁷ Halder and Jaishankar, Property Rights of Hindu Women (n 134) 672.

¹⁴⁸ Sreenivas, *Conjugality and Capital* (n 145) 949.

¹⁴⁹ Halder and Jaishankar, Property Rights of Hindu Women (n 134) 674.

¹⁵⁰ Ibid.

¹⁵¹ Christine Keating, 'Framing the Postcolonial Sexual Contract: Democracy, Fraternalism, and State Authority in India' (2007) 22(4) *Democratic Theory* 130, 134.

¹⁵² 'Selected Speeches of Women Members of The Constituent Assembly' (*Secretary-General, Rajya Sabha, New Delhi*, April 2012) 1, 68 <http://rajyasabha.nic.in/rsnew/publication_electronic/Selected%20Women%20Speech_Final.pdf> accessed 04 May 2024.

¹⁵³ Keating, *Framing the Postcolonial Sexual Contract* (n 151).

¹⁵⁴ Ibid 135.

4.1 Women's Rights and The Constitution of India

Fundamental Rights are contained in Part III (Articles 12 to 35) of the Constitution of India and are enforceable in a court of law.¹⁵⁵ Article 14 of the Constitution, mentions the right to equality for all persons.¹⁵⁶ Similarly, Article 15 clearly prescribes that 'the State shall not discriminate against any citizen on the ground of religion, race, caste, sex, place of birth or any of them.'¹⁵⁷ Further, under Article 15(3), 'Nothing shall prevent the State from making any special provision for women and children.'¹⁵⁸ Hence, Article 15 positively discriminates in favour of women since women in the Indian society had been looked down upon since ancient times and as a result did not have equal social, political and economic status similar to men.¹⁵⁹ Article 16 provides for equality of opportunity in matter of public appointments for all citizens.¹⁶⁰ Article 21 confers on every person the fundamental right to life and personal liberty.¹⁶¹ Apart from the fundamental rights in Part III, the Directive Principles of State policy (Article 36 to 51) in Part IV of the Constitution contains what can be best described as positive obligations of the State. Part IV incorporates many directives to the State in order to improve the status of women. But, as per Article 37 of the Constitution, 'the provisions in Part IV are not enforceable by any court, however, the provisions are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.'¹⁶² Article 39 prescribes the State to secure to all its citizens to have equal rights to adequate means of livelihood.¹⁶³ It also directs the State to secure equal pay for equal work for both men and women.¹⁶⁴

However, regardless of the efforts of the constituent assembly to establish equal rights for women as part of the chapter on fundamental rights in the Constitution, the assembly rather failed to bring substantial changes to the personal laws (are the laws relating to aspects of family such as marriage, succession that are derived from religion, for example, Muslims in India are governed by the Muslim Personal Law [Shariat] Application Act, 1937) that discriminated against women.¹⁶⁵ It was on the recommendation of the Fundamental Rights Committee that the issue of eliminating separate personal laws and replacing it with a uniform civil code protecting the rights of women in all communities was taken up by the constituent assembly.¹⁶⁶ However, this progressive measure was defeated in the assembly and as a compromise those in favour of the measure had to agree with a provision of the uniform civil code under the chapter on directive principles which was legally unenforceable.¹⁶⁷ Article 44 of the Constitution, as it stands today, speaks of the duty on the part of the State to take steps for establishing a uniform civil code.¹⁶⁸ But, before going any further, it is important to highlight some of the key issues in the debate around the uniform civil code during the drafting of the Constitution. Two objections were raised in the constituent assembly against establishing a uniform civil code throughout India. Firstly, that a uniform civil code would be violative of the fundamental right to freedom of religion guaranteed

¹⁵⁵ Mahendra Pal Singh, V.N. Shukla's *Constitution of India* (12th edn, Eastern Book Company 2013) 24.

¹⁵⁶ The Constitution of India, art 14 - Equality before law: 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'

¹⁵⁷ The Constitution of India, art 15(1).

¹⁵⁸ The Constitution of India, art 15(3).

¹⁵⁹ Ankita Chakraborty, 'Gender Justice Under Indian Constitution' (2016) 2(3) *International Journal of Legal Developments and Allied Issues* 15, 22; See also, Kamala Sankaran, 'Special provisions and Access to Socio-Economic Rights: Women and the Indian Constitution' (2007) 23(2) *South African Journal On Human Rights* 277, 282.

¹⁶⁰ The Constitution of India, art 16 - Equality of opportunity in matters of public employment: '(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.'

¹⁶¹ The Constitution of India, art 21 - Protection of life and personal liberty: 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

¹⁶² The Constitution of India, art 37.

¹⁶³ The Constitution of India, art 39(a) - Certain principles of policy to be followed by the State: 'The State shall, in particular, direct its policy towards securing - (a) that the citizens, men and women equally, have the right to an adequate means of livelihood.'

¹⁶⁴ The Constitution of India, art 39(d) - Certain principles of policy to be followed by the State: 'The State shall, in particular, direct its policy towards securing - (d) that there is equal pay for equal work for both men and women.'

¹⁶⁵ Keating, *Framing the Postcolonial Sexual Contract* (n 151) 137.

¹⁶⁶ *Ibid* 138.

¹⁶⁷ Keating, *Framing the Postcolonial Sexual Contract* (n 151) 138.

¹⁶⁸ The Constitution of India, art 44 - Uniform Civil code for citizens: 'The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.'

under Article 25¹⁶⁹ and secondly, that a uniform civil code would go against the minority community in India.¹⁷⁰ In relation to the first objection, Article 44 does not infringe upon the freedom of religion which is guaranteed under Article 25(1).¹⁷¹

'While the right to freely practice religion subject to the limitations of public order, health and morality is guaranteed, there is no such protection to activities which are economic, commercial or political in their character, though they are associated with religious practice and the State has the power to either regulate or restrict such activity under Article 25(2)(a) of the Constitution.'¹⁷²

With respect to the second objection, an excerpt from the speech of K.M. Munshi, Member of the Drafting Committee, Constituent Assembly is helpful in understanding the different positions undertaken by varied groups, especially on women's rights:

'I know there are many among Hindus who do not like a uniform civil code...They feel that the personal law of inheritance, succession etc. is really a part of the religion. If that were so, you can never give for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindi religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India...Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, a strong and consolidated nation.'¹⁷³

Despite Munshi's observations, as noted previously, the measure to establish a uniform civil code was defeated in the constituent assembly.¹⁷⁴ Repeated attempts by members of the assembly to bring changes to personal laws met with strong criticism from other members in the assembly.¹⁷⁵ Interestingly, according to the opponents of the reform, non-interference in personal law was the secret formula to carry on peaceful administration in the country.¹⁷⁶ Aside from the debate on uniform civil code, another issue that holds significance in relation to women's rights is linked to the reforms within Hindu personal law, popularly known as the discussion on the Hindu Code Bill. The Committee on the Hindu Code Bill was initially headed by B N Rau and later by Dr. B. R. Ambedkar after India's independence. Essentially, the Hindu Code Bill was to make sweeping changes to laws on Hindu marriage, inheritance and give equal rights to women, but when the bill was presented for discussion, it faced immense opposition from Hindu members in the parliament.¹⁷⁷ Even women came forward to oppose the bill. Jankibai Joshi, the then President of the All India Hindu Women's Conference in a letter to former President of India, Dr. Rajendra Prasad said that 'any move to replace the concept of Hindu marriage as sacrament by making it contractual would destroy the entire family system of the Hindus. The Hindu family should be taken as a unit and fragmentation of the property should not be allowed so as to go away to other family through daughter.'¹⁷⁸

¹⁶⁹ The Constitution of India, art 25 - Right to Freedom of Religion: '(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.'

¹⁷⁰ Singh, V.N. *Shukla's Constitution of India* (n 155) 378.

¹⁷¹ Ibid 379.

¹⁷² Singh, V.N. *Shukla's Constitution of India* (n 155) 262.

¹⁷³ Ibid 379-380.

¹⁷⁴ Keating, *Framing the Postcolonial Sexual Contract* (n 151) 138.

¹⁷⁵ Ibid - 'In arguing against the interference of the new Indian state in different communities' personal laws, assembly member Mohammad Ismail threatened that any interference into matters having to do with marriage and succession would engender disharmony, but reassured that if people are allowed to follow their own personal law there will be no discontent or dissatisfaction.'

¹⁷⁶ Keating, *Framing the Postcolonial Sexual Contract* (n 151) 138.

¹⁷⁷ Flavia Agnes, 'Has the Codified Hindu Law Changed Gender Relationships?' (2016) 46(4) *Social Change* 611, 612; See also, '5 February 1951: Hindu Code Bill was introduced in the Parliament' (*Dr. Ambedkar's Caravan*, 05 February 2016) <<https://drambedkarbooks.com/tag/hindu-code-bill/>> accessed 04 May 2024 - 'Syama Prasad Mukherjee, Minister for Industry and Supply (1947-50) said it (Hindu Code Bill) would shatter the magnificent structure of Hindu culture and stultify a dynamic and catholic way of life that had wonderfully adapted itself to the changes for centuries.'

¹⁷⁸ 5 February 1951: Hindu Code Bill was introduced in the Parliament (n 177).

The above-mentioned account on the scenario surrounding the framing of some of the key provisions in the Constitution concerning women's rights forces one to conclude that the assembly members in their attempt to establish equality between the sexes, in some way either through their action/inaction reinforced society's control over women. In other words, because members of the constituent assembly could not agree upon to apply the fundamental right to equality to every sphere of an individual's life, especially to property rights, marriage and divorce, the ancient customs and traditions that discriminated against women, especially Hindu women and denied them equal status, remained more or less intact despite several legislations that came after the Constitution which guaranteed equal rights to Hindu women in marriage and property such as The Hindu Marriage Act, 1955 and The Hindu Succession (Amendment) Act, 2005. This particular observation also helps us to understand the tension between formal state law and community backed non state 'law' in present day India. This also demonstrates the complexity of legal plurality in the Indian society. In the process of unifying the nation as one entity, the members brought about a 'separation of the public and private sphere'¹⁷⁹, wherein, 'the public sphere would be the arena where principles of equality and freedom would be operative, and the private sphere would be the arena where relations of domination and subordination would legitimately obtain.'¹⁸⁰

Conclusion

The status of women in Indian society has been a complex and evolving issue, deeply influenced by historical, cultural, and social factors. From the Vedic period, where women had relatively better access to education and could hold significant roles, to the post-Vedic period marked by declining status due to practices like child marriage and dowry, the trajectory of women's rights has been inconsistent.

The colonial era brought some reforms, primarily driven by British legislative actions aimed at curbing oppressive practices such as child marriage. However, these changes were slow and often met with resistance due to the entrenched patriarchal mindset and the intersection of gender with caste, religion, and class. Despite these efforts, women's education and property rights remained severely restricted.

The drafting of the Indian Constitution marked a significant step towards formalizing gender equality, with provisions aimed at ensuring equal rights for women. However, the tension between state law and community-backed personal laws, especially those derived from religious customs, has continued to hinder the full realization of these constitutional guarantees. In post-colonial India, despite progressive legislation like The Hindu Marriage Act 1955 and The Hindu Succession (Amendment) Act 2005, which aimed to improve women's rights in marriage and property, the societal values and norms continue to pose significant challenges. The historical exclusion of women from education and economic opportunities has left a lasting impact, contributing to the persistent gap between male and female literacy rates and economic participation.

In conclusion, while there have been notable advancements in the legal and constitutional framework to protect and promote women's rights in India, the societal acceptance and implementation of these rights remain inconsistent. The interplay between traditional customs and modern legal standards continues to shape the status of women, necessitating ongoing efforts to bridge this gap and ensure true gender equality in all spheres of life.

¹⁷⁹ Carole Pateman, *The Sexual Contract* (1st edn, Polity Press 1988) 102.

¹⁸⁰ Ibid; See also, Keating, *Framing the Postcolonial Sexual Contract* (n 151) 141 - 'By maintaining personal laws that discriminated against women in terms of property ownership, inheritance, marriage and divorce, however, the assembly perpetuated the legal subordination of women in the family in the postcolonial polity.'