

TOWARDS EQUALITY

**Report Of The
Committee On The Status
Of Women In India**

**GOVERNMENT OF INDIA
MINISTRY OF EDUCATION & SOCIAL WELFARE
DEPARTMENT OF SOCIAL WELFARE
NEW DELHI
DECEMBER, 1974**

New Delhi
December 31st, 1974

Dear Professor Hasan,

We have great pleasure in submitting to you the Report of the Committee on the Status of Women in India. We take this opportunity to thank you for the support and understanding that you have so generously extended to us. We have endeavoured to fulfil, to the best of our ability, the objectives of the Terms of Reference set before us. As you are aware, they cover a wide perspective, including all the important aspects affecting the life of women. Since this was the first investigation of its kind, we had no model or material to use as a frame of reference. The paucity of data posed another great problem.

Any assessment of the status of women cannot be done outside the social framework. We have, therefore, based our enquiry keeping in mind the diversities and inequalities that prevail in our society.

Our investigation has revealed that large masses of women in this country have remained unaffected by the rights guaranteed to them by the Constitution and the laws enacted since Independence. Our recommendations are made primarily with a view to making these rights more real and meaningful. We are confident that they will be considered in this light and measures for their implementation will be initiated expeditiously.

We are fortunate that the presentation of this Report coincides with the celebration of 1975 as the International Women's Year. We hope that our findings will provide better understanding of the problems facing women and aid the policy of integrating them fully in the process of national development, ensuring thereby, improvement in their status in our society.

With warmest regards,

Yours sincerely,

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INTRODUCTION

The Preamble to the Constitution of India promises 'to secure to all its citizens, Justice-social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all-Fraternity, assuring the dignity of the individual and the unity of the Nation'.

While improvement in the status of women was a pledge made by the Constitution makers and admitted by the Government from the very beginning as one of the major tasks facing the country, no comprehensive review of the achievements in this direction had been undertaken so far. Some laws, attempting to embody the principles underlying the Constitution had from time to time passed through the legislature. Attempts were made to introduce programmes of development, aimed at enabling women to play their role in our national life in an effective manner. Partly as a result of these various measures and partly because of the general processes of social change which have speeded up since independence, the status of women in our country has undoubtedly undergone considerable change. It was felt by the Government of India that while these changes have been considerable in the urban areas, the problems continued to remain virtually unchanged in most of the rural areas. Further, with the changing social and economic conditions in the country, various new problems relating to the advancement of women which had not been visualised by the Constitution makers and the Government in its earlier days have emerged. The Government of India, therefore, felt that a comprehensive examination of all questions relating to the rights and status of women in this country would provide useful guidelines for the formulation of social policies. For this purpose it constituted the Committee 'on the Status of Women by a Resolution of the Ministry of Education and Social Welfare on 22nd September, 1971. The terms of reference of the Committee were as follows :¹

- (1) To examine the Constitutional, legal and administrative provisions that have a bearing on the social status of women, their education and employment.
- (2) To assess the impact of these provisions during the last two decades on the status of women in the country, particularly in the rural sector and to suggest more effective programmes.
- (3) To consider the development of education among women and determine the factors responsible for the slow progress in some areas and suggest remedial measures.
- (4) To survey the problems of the working women including discrimination in employment and remuneration.
- (5) To examine the status of women as housewives and mothers in the changing social pattern and their problems in the sphere of further education and employments.
- (6) To undertake survey or case studies on the implications of the population policies and family planning programmes on the status of women.
- (7) To suggest any other measures which would enable women to play their full and proper role in building up the nation.

Recognising the wide scope of its enquiry as well as the complex nature of the study, much of which required technical expertise and knowledge in different fields, the Committee adopted various methods to carry out its task. Six small Task Forces were appointed to study in depth the problems affecting women and to assess the changes in the fields of law, education, employment, other aspects of economic life, political participation and social life in general. At a later stage the Committee appointed two Study groups of experts to advise the Committee on the general health problems that affect women's socio-economic status and on the wide prevalence of a social practice, the dowry system, in the country².

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1. Appendix A gives the Resolutions of the Government of India constituting the Committee, and subsequent changes in its composition.
 2. Appendix B gives the composition of these eight expert groups.

The Committee also undertook a few surveys³ to assess the changes in the social status of women through significant indicators like participation in family decision making and share of work both within and outside the family, attitudes to education, employment, marriage laws and practices, purdah and general position within the family, political participation etc. Information was obtained from various Departments of the Central and the State Governments regarding development programmes undertaken by them to improve the condition of women. The Committee toured all States and several Union Territories to obtain first-hand information regarding the problems being experienced by women in different areas. State Governments were requested to arrange meetings and visits on the basis of guidelines sent by the Committee.⁴

The intention of the Committee was to interview a cross section of women from different walks of life, in the distinctive regions of each State, and to hold discussions with local knowledgeable persons and officials responsible for specific programmes for women's development. On an average the Committee met about 500 women belonging to different categories in each State. These tours were of immense value, for acquiring an understanding of the conditions of women in different parts of the country, as well as for clarifying the Committee's approach to its task. This approach, which we discuss at the beginning of our report has thus evolved from the evidence that we gathered in the course of our investigation.

We invited views and suggestions of prominent women from all walks of public life and received some valuable comments. We also met representatives of national women's organisations and other voluntary agencies working in the field of welfare, national trade union organisations, political parties, leading women in public life, and invited their suggestions. Two seminars were organised by local women leaders in Bombay and Madras to assist the Committee's work. We also invited some individual experts, non-officials and officials to discuss specific problems in their fields⁵. Our thanks are due to all these organisations and individuals for their assistance in our task.

As our investigation progressed, we identified areas and problems that required careful, scientific and expert investigation. Since it would have been impossible for the Committee to cover such a wide range of subjects by itself, it was necessary to seek the assistance of scholars and experts in different fields for this purpose. Since all the problems concerned different aspects of social change, we sought the assistance of the Indian Council of Social Science Research.

The Committee places on record its gratitude to the Indian Council of Social Science Research, New Delhi and particularly to Sri J. P. Naik, its Member-Secretary, for the invaluable help they have rendered, in having commissioned, at our request, a series of special studies and placing them at our disposal. We are indebted to the band of scholars who undertook these studies⁶. Some of these studies are based on published material scattered in different books and periodicals, others are based on empirical investigations which have produced original data on specific problems that have a bearing on the status of women. This body of material has proved to be of immense value for our Report. We hope it will also provide sources for subsequent research regarding women's status, problems and the impact of social change on different categories of women in this country. Since these studies were conducted by social scientists of various disciplines, many of whom had never thought of investigating these particular problems of women's status before, we may also hope that their experience will stimulate further research in these fields.

We would like to record our gratitude particularly to Dr. Ashish Bose and his colleagues at the Institute of Economic Growth for their specialised assistance in helping us to comprehend the complex problems of population trends. We must convey our thanks to the Indian Institute of Technology, Delhi and the University Grants Commission for permitting members of their staff to undertake studies for us. We also thank the Indian Institute of Public Administration for all the help rendered to us. We must record our thanks to Shri Ranjit Batta for translating the Portuguese Civil Code, the Anthropological Survey of India and the members of the staff of the Office of the Registrar General, Census for their assistance in the collection of data.

3. Appendix C gives details.

4. Appendix D gives details of these tours and the guidelines sent to State Governments.

5. See Appendix E.

6. Appendix F gives the full list of the studies prepared for the Committee and their authors.

Our thanks are also due to the various Departments of the State and Central Governments and the Chairmen of the Central and State Social Welfare Boards for the cooperation extended to the Committee. We also have to thank the large number of individuals, men and women, in different States, for their assistance in making our tours purposeful. We also thank the members of our Task Forces and Study Groups.

The Committee held 31 meetings extending over 65 days. At the 17th meeting, held on 29th June 1973, it was decided to constitute a sub-committee for preparation of the draft Report⁷. Without their unremitting labour, it would not have been possible for us to complete our Report.

Our Secretariat—particularly our small but devoted band of research staff extended unstinted support and co-operation⁸ in carrying out our investigation, for which we are deeply grateful. Our thanks are especially due to Smt Urmila Gupta, Deputy Secretary and Dr. Kumud Sharma, Research Officer, for their assistance to the Drafting Committee.

Finally we must place on record our gratitude to the Member-Secretary, Dr. Vina Mazumdar for her energy, efficiency, and dedication, which enabled us to complete our work within the stipulated time.

The problems affecting women's status in India are so vast, complex and dynamic that we can only claim to have made a beginning in studying them. Changes in the status of women will be a long term aspect of our social process and will require continuous examination and assessment by persons interested in social change. We hope our efforts have succeeded in at least generating some specific interest in this field.

7. Appendix G gives the names of members of the Drafting Committee.

8. Appendix H gives the list of the Committee's Secretariat.

CHAPTER I

APPROACH TO THE STUDY OF STATUS OF WOMEN IN INDIA

1.01 Our terms of reference clearly indicate three major dimensions and objectives for our enquiry:—

- (a) To assess the impact of the constitutional, legal and administrative provisions on the social status of women, their education and employment particularly in the rural sector during the last two decades;
- (b) to examine the status of women in the changing social pattern; and
- (c) to suggest remedial and other measures in the fields of law, education, employment, population policy etc., "which would enable women to play their full and proper role in building up the nation".

1.02 The frame-work for the study was thus provided on the one hand by the constitutional provisions that have a bearing on the status of women and, on the other, by the clear objective specified in the last term of reference, viz. enabling women to play their 'full and proper role in building up the nation'. Apart from making it unnecessary for us to define the objectives, the scope and the need for the study, they gave us two clear frames of reference, against which existing conditions in our society could be measured.

1.03 The Preamble to the Constitution of India resolved to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity of the Nation.

1.04 To attain these national objectives, the Constitution guarantees certain fundamental rights and freedoms such as freedom of speech, protection of life and personal liberty. While these may be termed positive rights, the negative rights are the prohibition of discrimination or denial of equal protection¹.

1.05 Indian women are the beneficiaries of these rights in the same manner as Indian men. Article 14 ensures 'equality before law' and Article 15 'prohibits any discrimination'. There is only one specific provision in Article 15(3), which empowers the state to make 'any special provision for women and children', even in violation of the fundamental obligation of non-discrimination among citizens, *inter alia* of sex. This provision has enabled the State to make special provision for women, particularly in the field of labour legislation like the Factories Act, the Mines² Act, etc. These special provisions in favour of women need not be restricted to measures which are beneficial in the strict sense, and therefore, the provision upholding that a man is punished for adultery but not a woman was regarded as not being discriminatory.³

1.06 Article 16 (1) guarantees "equality of opportunity for all citizens in matters relating to employment, or appointment to any office under the State". And Article 16(2) forbids discrimination "in respect of any employment or office under the State" on the grounds only of "religion, race, caste, sex, descent, place of birth, residence or any one of them". The obligation not to discriminate in matters relating to employment or appointment to any office under the State has thus at least normatively ensured a significant position and status to Indian women. However, the Supreme Court recently dismissed *in limine* a writ petition of a woman lawyer who challenged her being prevented from employment in the Judge Advocate General's office for a 5 year short service commission in the law branch. The reasons given by the Government for barring women from applying were that 'they are required to travel by rail, road and river, sometimes for long periods at a stretch; they will have to be present in Court Martial where judge, accused and witnesses will all be males, and

1. Basu—Commentary on the Constitution of India (3rd edition) p.69.

2. *Infra* Chapter V for details

3. Yusuf v. State of Bombay 1954 S.C. 398.

that lady advocates are required to study life of soldiers (all males) in Army Units for several months⁴. The Government failed to appreciate the fact that these same grounds would also apply to the nursing and medical corps of the Army where women are employed.

1.07 In this context we would like to mention that during the tenure of Sri Charan Singh as Chief Minister, and under his instruction, the Government of Uttar Pradesh attempted a direct violation of this constitutional provision. In reply to a question asked in the Uttar Pradesh Vidhan Sabha on 16 July 1971, the State Government admitted that "in June 1970, the State Government sent a letter to the Government of India stating that women officers should not be admitted to the Indian Administrative Service. If that was not possible, then at least they should not be sent to this State".

Though this attempt did not succeed, it is a pointer that vigilance is necessary to ensure that the special provision permitted under Article 15 (3) is not used to the detriment of women by legislative or executive action.

1.08 The Directive Principles of State Policy enunciated in Part IV of the Constitution, embody the major policy goals of a welfare State. They concretize, together with the chapter on Fundamental Rights, the constitutional vision of a new Indian socio-political order. The Directive Principles are declared as non-justiciable; but "nevertheless fundamental in the governance of the country", and the state is charged with "a duty...to apply these principles in making laws" (Article 37). The Directive Principles were made non-enforceable in courts because it was felt that their fulfilment would be spread over a time-dimension of a few decades. The constitutional values embodied in the Fundamental Rights chapter needed immediate implementation; but in the case of the Directive Principles, this was not possible save at the cost of the viability of the state.

1.09 Juridically, the Directive Principles are a vital part of Indian Constitutional Law. Like the Preamble, they reflect high ideals of a liberal democratic polity; they are meant to be used by all agencies of the State as guidelines to action as major goals of policy; courts can use them as a body of values and standards relevant to the act of judicial choice-making. But the Directive Principles confer no power or legislative competence; nor can they give rise to a cause of action for which remedy is available in a court of law. The principles in themselves do not confer power, bestow rights, or create remedies. At the same time, they cannot be amended, save through the prescribed procedure. Some of them concern women indirectly or by necessary implication. A few are, as it were, "women-specific"⁵. In the first category fall—

- (a) the omnibus provision of Article 38 which in brief directs the State to secure a just social, political and economic order, geared to promote the welfare of the people; Art. 39 (b) (c) and (f) distribution of ownership and control of material resources of the community for the common good, prevention of concentration of wealth and means of production to the common detriment, and protection of childhood and youth against exploitation and moral and material abandonment; Art. 40 (organisation of village panchayats to promote self-government); Art. 41 (right to work, education and public assistance in cases of unemployment, oldage, sickness, disablement and other types of underserved wants); Art. 43 (provision of work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, of social and cultural opportunities, and the promotion of cottage industries); Art. 44 (uniform Civil Code); Art. 45 (free and compulsory education for all children up to the age of 14; and Art. 47 (raising the level of nutrition and the standard of living of the people and improvement of public health).
- (b) Directive Principles which concern women directly and have a special bearing on their status; These include Art. 39 (a) (right to an adequate means of livelihood for men and women equally); Art. 39 (d) (equal pay for equal work for both men and women); 39 (e) (protection of the health and strength of workers—men, women and children from abuse and entry into avocations unsuited to their age and strength); and Art. 42 (just and humane conditions of work and maternity relief).

4. Asha Goel v. Union of India.

5. Baxi, Upendra—'Constitutional Provisions relating to Status of Women—an analytical examination'; Paper prepared for the Committee.

1.10 As already mentioned, the Fundamental Rights and the Directive Principles are the instruments to attain our national objectives of Justice, Liberty and Equality. By adopting the principle of adult franchise, it seeks to establish a democratic republic by giving the adult population direct or indirect share in the Government.

1.11 The special attention given to the needs and problems of women, to enable them to enjoy and exercise their Constitutional equality of status, along with other specific provisions relating to the hitherto suppressed sections of our society have led many scholars to describe the Indian Constitution as a 'social' document embodying the objectives of a social revolution. There is no doubt that the Constitution contemplates attainment of an entirely new social order by making deliberate departures in norms and institutions of democratic governance from the inherited social, political and economic systems. In doing so the Constitution assigns primacy to law as an instrument of directed social change. It thus demands of the legislature, the executive and the judiciary, continuous vigilance and responsiveness to the relationship between law and social transformation in contemporary India.

1.12 The field of our enquiry was complicated by many groups of variables, making our investigation, particularly the search for trends and patterns of social behaviour and attitudes, highly complex and difficult. Some of them stemmed from the characteristic features of our society, others from processes of change released by modernization and development. Some others were repercussions of the historical vicissitudes that affected India in the last few centuries, particularly the impact of a colonial regime and exposure to a foreign culture. Lastly, they also reflected the influence of the struggle for freedom and social justice. While all these variables are closely inter-related, for the sake of clarity we may classify them in the following manner :

(a) **Characteristics of our society with its lack of homogeneity even within the basic pattern of inequalities :**

1.13 While it is true that the status of women constitutes a problem in almost all societies, and has emerged today as a fundamental crisis in human development, we found that sex inequality cannot in reality be differentiated from the variety of social, economic and cultural inequalities in Indian society. The inequalities inherent in our traditional social structure, based on caste, community and class have a very significant influence on the status of women in different spheres. Socially accepted rights and expected roles of women, norms governing their behaviour and of others towards them vary among different groups and regions. They are closely affected by the stage and methods of development, and the position held by the group in the social hierarchy. All this makes broad generalisations regarding women's status unrealistic. It was, therefore, necessary to understand the reality of women's roles and status in the different strata of our society.

(b) **Impact of the complex process of socio-economic and political change :**

1.14 The complex processes generally described by broad terms like modernisation, democratisation, development, urbanisation, industrialisation, etc., have all affected the status of women in differing degrees. Here again, it was not possible to discover any uniform pattern of this impact, since not all sections of women have been affected by these processes in the same manner. It is, however, generally accepted that a change in the status of women is a good indicator of the pattern and direction of social change. If the direction of that change is towards a more egalitarian distribution of roles between men and women, in tune with the constitutional directives, then the direction of change is a wholesome one. If, however, the various modernising forces result in an intensification of inequalities, then we are moving away from the spirit of the Constitution. It was, therefore, important to understand the direction of these changes in order to assess the nature of their impact on different sections of our women.

1.15 The issue of social change in India is a complex one. Given the highly complex and heterogeneous social situation in the country, it is not surprising that change takes many directions, some of which even conflict with one another. We had to consider only those components of this change which affect the status of women. This brought us face to face with structural changes in the economy as a result of commercialisation, expanding markets and technological change in the methods of production. The combination of these forces with the growth of population has increased both poverty and wealth. Education, urbanisation and wider avenues of participation in the social process have both contributed and tried to combat the increase in social inequalities that resulted from this process. We had to examine the

extent of their impact on the roles, rights and opportunities open to women in different spheres of social life.

1.16 It was also necessary to consider the difference between what are called 'traditional' and 'modern' values, in so far as they affect the life of women. Here again, we discovered that traditionalism and modernity do not necessarily reflect their temporal setting. Traditional values handed down from generation to generation were modelled on the ideal behaviour pattern of the upper classes of our society. Any improvement in the economic conditions of the lower castes or classes has almost invariably led to their adoption of these values. An important component of upper caste values was the seclusion of women and their withdrawal from work outside the home.

1.17 From the point of view of the socially lower groups, adoption of these values enhances their status in the social hierarchy. We could see the impact of this ideology operating among these groups even now. On the other hand, a considerable section of the upper class or the middle class of today has abandoned these values in favour of what is generally regarded as 'modern' ideology regarding equal rights and opportunities of women for participation in the social process. This indicates certain structural changes within the value system and behavioural norms of the middle class under the compulsion of social change. The process of emulation of the traditional values of the upper classes by others, however, though they constitute modernity in the thinking of the latter, is a trend in the opposite direction. It is obvious that the impact of these contradictory forces is bound to give rise to certain ambiguities and confusion in the minds of both men and women in our society.

(c) Instruments of social engineering :

1.18 The period after Independence witnessed the enactment of a number of laws that sought to apply the principles underlying the Constitutional guarantees to the sphere of social life. The reforms in personal laws governing marriage and inheritance, the labour laws ensuring humane conditions of work, maternity benefits and welfare of workers, and social laws seeking the protection of women and children against immoral traffic and exploitation, tried to remove the disabilities that contributed to the low status of women in our society. At the same time, the policies and programmes for economic and social development initiated by the Government, attempted positive action to improve and widen opportunities for women to participate in the social processes in a more effective manner. Education, vocational training, health services, family planning, welfare and development programmes, sought to change and improve the conditions of living and the mental horizons of women.

1.19 Apart from examining these measures initiated by the Government, we had to include under this category, the organised or individual efforts to bring about changes in social attitudes and norms of behaviour that were generated by the community. Most of them had started either as a part of the Freedom Movement, or dated back to the earlier movement for social and religious reform that developed in the 19th century. Leaders of public opinion and community organisations had sought to mobilise various groups of people to propagate measures for upliftment of women's status. The ideology that emerged from these various attempts—governmental and social—have helped to shape the goals and left an impact on the minds of any sections of our society, and have played a significant role in changing the status of women.

(d) Degrees of social acceptance of desired goals :

1.20 Indicators of social acceptance of any goals set for the future must include attitudes of men and women as well as the availability of institutionalised infrastructures that support the attainment of such goals. Examining this group of variables involved discussing the influence of traditional, cultural and religious norms, as well as the impact of modern values such as human rights, social justice, equality and participation. It also involved examining the regional differences in the cultural norms that affected women's roles and participation in the social process. This revealed the positive and negative sets of social factors which affected the success or failure of the policies and instruments of social engineering, i.e. institutionalized opportunities as well as disabilities that affect women's enjoyment and exercise of various legal and constitutional rights and their performance of the multiple roles that the goals of our society call for.

(e) Positive factors influencing women's progress :

1.21 We had to examine the actual achievements in the fields of education, employment, health, institutionalized welfare facilities and services for development and participation in

different levels and spheres of national life. It was also necessary to study the disappearance or removal of certain traditional taboos that had sought to restrict women's life to limited spheres.

(f) Negative factors influencing women's progress :

1.22 We had to identify the centres of resistance to the desired change in women's status and roles and the disabilities that still hamper many groups of women at different levels of existence. In the process of this examination, we attempted to identify the lacuna or deficiencies in the instruments of social engineering that have caused the failure to overcome these negative influences.

1.23 In order to study the nature and influence of these broad studies of variables we had to depend on various types of indicators. Quantitative indicators provided by vital statistics of birth and mortality rates, sex ratio, rates of participation in economic and political life, literacy and education, provided certain broad measures and trends. None of them could, however, be studied meaningfully without a qualitative appraisal and understanding of their limitations in a field of this kind. For instance the concept of national and State averages normally used for most quantitative analysis becomes meaningless in the context of tremendous socio-economic inequalities and variations in our society. Secondly, there is a wide gap between stated social objectives and achievements, between the legal framework and empirical realities, between symbolism and actuality. On the one hand these statistics indicated rapid improvement in education, literacy, expectation life and political participation. These trends, coupled with the success and the position achieved by a minority of women, could mislead us to think that the status of an average Indian woman was very high. Detailed investigations, however, show that while opportunities had widened immensely at certain levels of society and enabled women to forge ahead in areas which had been completely closed to them in earlier years, for the other levels of society this was not the case. The uneven rates of development between regions, communities and sections of our population often make analysis by quantitative methods baffling. It was, therefore, necessary to use other methods and techniques to assess these different levels of social reality.

Sources of Data :—

1.24 The sources of data availed of by the Committee may be broadly classified under three categories :

(1) Basic documentary sources—primary, secondary and tertiary—which provide vital statistics and other demographic data, trends of development and decay, and often present the state of affairs in particular areas of life.

These included :—

- Census and Registration data, their analysis as also comparative studies based on such material, indices worked out from them, etc.
- National Female Surveys and records available with various organisations including government departments ;
- Reports of committees and commissions appointed by the Government from time to time.

These provided the necessary information on economic participation of women, literacy and education, political participation, governmental efforts—both legislative and administrative—towards improvement of women's status.

(2) Special studies based on literature, using both published as well as unpublished sources. These were prepared at our request by scholars and specialists in the field. The topics mentioned below indicate the coverage attempted in these studies.

- content analysis, mainly to understand the trends in social attitude regarding women
- image of women in the various religious traditions of India ;
- women in family, kinship, marriage and household ;
- marriage institutions in tribal and non-tribal India ;
- women among Scheduled Castes and Scheduled Tribes ;
- roles and status of women since Independence—all-India and State profiles ;

and actual role behaviour. Processes of change are responsible for considerable divergence between these three aspects of a role. Performance of multiple roles in varied social situations often leads to a change in the role perception of individuals. Changes in the actual role performance over a period of time influence the expected role behaviour, and gradually there are changes in the ideal role behaviour. But this process is characterised by unreasonable expectations of others and by the incompatibility between the various roles that an individual has to perform in a given situation. This is particularly relevant for women in India.

1.30 In respect of some institutionalized disabilities, women as a whole can be compared with men as a whole, for differences between the status of men and women are important in the cognitive map as well as in ordering interpersonal relations. Presence of ascriptive norms in respect of sex-linked statuses are universal with wide variations in achievemental avenues open to them.*

1.31 As pointed out earlier, a woman like any person, occupies very many status positions at a given point of time and plays a number of roles, such as those in the kinship system, family system, and the wider social system. Her status in society is usually not determined by any one particular status position held by her, but by her composite status which results from the merging of various statuses. To this should be added her consciousness of her own status.

1.32 There are multifarious principles of status differentiation operating simultaneously—place in ritual hierarchy, financial position, independent job, education, political participation, and so on. A woman of the labour class enjoys a certain degree of autonomy in the house, but she has a low status in the wider setting. Similarly a housewife in a well-to-do home may be enjoying an overall high status, but she may be a distinctly inferior partner in the house. In investigating the position of women, various institutional settings have to be taken into account.

1.33 Status is realized through roles. Hence the best way to assess the status of women of any group or category, or in any sub-system is to analyse the roles women are being called upon to play and the manner of their performance. This also brings in the structure of rights and opportunities provided to them by the State and by social and cultural institutions which do not necessarily or always reinforce each other.

1.34 Examination of the groups of variables indicated earlier made it clear that the status of women in the Indian context cannot be defined simply. General concepts like equality, role differentiation, legal, social and political rights, dependency or independence, are not applicable to all sections of our population. Since a very large section of our society still continues to be under the influence of traditional standards, we had to juxtapose the role conception, norms and values in all their wide variety in traditional society, against the new dimensions in women's status and roles introduced by the Constitution and the processes of social change. 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 right of her own. The radicalism of the Constitution and its deliberate departure from the inherited social system lay in its implicit assumption that every adult woman, whatever her social position or accomplishments, will function as a citizen and as an individual partner in the task of nation building. While motherhood is an important function, the Constitution implied that this could no longer be regarded as the only significant role for women. A gap between traditional social attitudes and institutions, and the new roles that women are expected to play in the political, social and economic spheres, creates problems and imposes constraints on women's ability to perform such roles. We had to identify the exact nature of these disabilities and constraints.

1.35 **Analysis by Categories:**—An examination of the expected and actual roles and the constraints that affect women's performance of these multiple roles made it imperative for us to examine these constraints at different levels of society. Any meaningful analysis of restrictions imposed by social attitudes and norms, possession or lack of necessary equipment, e. g. education and other employable skills, political awareness, etc., was only possible by studying women in different categories. Our experience showed that while Indian society can be categorised by castes, communities and classes, for our purpose the most relevant broad categories were as follows:—

* *Ascribed status* refers to "any status that is based not on individual ability, skill, effort or accomplishment but on inherited positions in the society". *Achieved status* refers to "a status acquired by an individual through his efforts, often through competition and the use of special abilities, knowledge, and skill".

- (a) women below the subsistence line, whose problems and constraints are radically different in nature from those suffered by women in other sections of society;
- (b) women who move continuously between security and subsistence, and often descend below the subsistence line with the disappearance of their means of earning a livelihood; and
- (c) women firmly above the security line.

Guiding Principles and Criteria:

1.36 Our guiding principles and criteria follow naturally from our terms of reference. The first of these are the values and goals put forward in the constitution, namely equality and social justice.

1.37 Equality is an article of faith in our Constitution and guaranteed by specific articles. We could therefore, treat this as a settled fact, for which no discussion was necessary. Our investigation, however, proved that there was still considerable ambiguity as well as ambivalence in the general understanding of the need and implications of sex equality in our country.

1.38 The history of the discussion on women's rights, both in the Constituent Assembly and in the Central Legislature over the Hindu Code Bill in the period immediately after Independence, indicates that attitudes towards women's equality vary sharply. As long as the discussion was on abstract principles, as was the case during the debate on Fundamental Rights in the Constituent Assembly, there was no dissentient voice to challenge or even to provoke a discussion on this historic decision. When it came to applying the same principles on established preserves of traditional male privileges, such as the right to property and the unchallenged dominance of the husband in family life, the reactions of the same body was very different. One group accepted both the concept of equality and its implications for society. The second group accepted the concept in theory, but was not prepared to practise, or follow up its implications. The third group rejected the concept outright—as totally inapplicable and undesirable for Indian society.

1.39 We believe:

1. that equality of women is necessary, not merely on the grounds of social justice, but as a basic condition for social, economic and political development of the nation;
2. that in order to release women from their dependent and unequal status, improvement of their employment opportunities and earning power has to be given the highest priority;
3. that society owes a special responsibility to women because of their child-bearing function. Safe bearing and rearing of children is an obligation that has to be shared by the mother, the father and society;
4. that the contribution made by an active housewife to the running and management of a family should be admitted as economically and socially productive and contributing to national savings and development;
5. that marriage and motherhood should not become a disability in women's fulfilling their full and proper role in the task of national development. Therefore, it is important that society, including women themselves, must accept their responsibility in this field;
6. that disabilities and inequalities imposed on women have to be seen in the total context of a society, where large sections of the population—male and female, adults and children—suffer under the oppression of an exploitative system. It is not possible to remove these inequalities for women only. Any policy or movement for the emancipation and development of women has to form a part of a total movement for removal of inequalities and oppressive social institutions, if the benefits and privileges won by such action are to be shared by the entire women population and not be monopolised by a small minority.
7. that if our society is to move in the direction of the goals set by the Constitution, then special temporary measures will be necessary, to transform *de jure* into *de facto* equality.

CHAPTER II

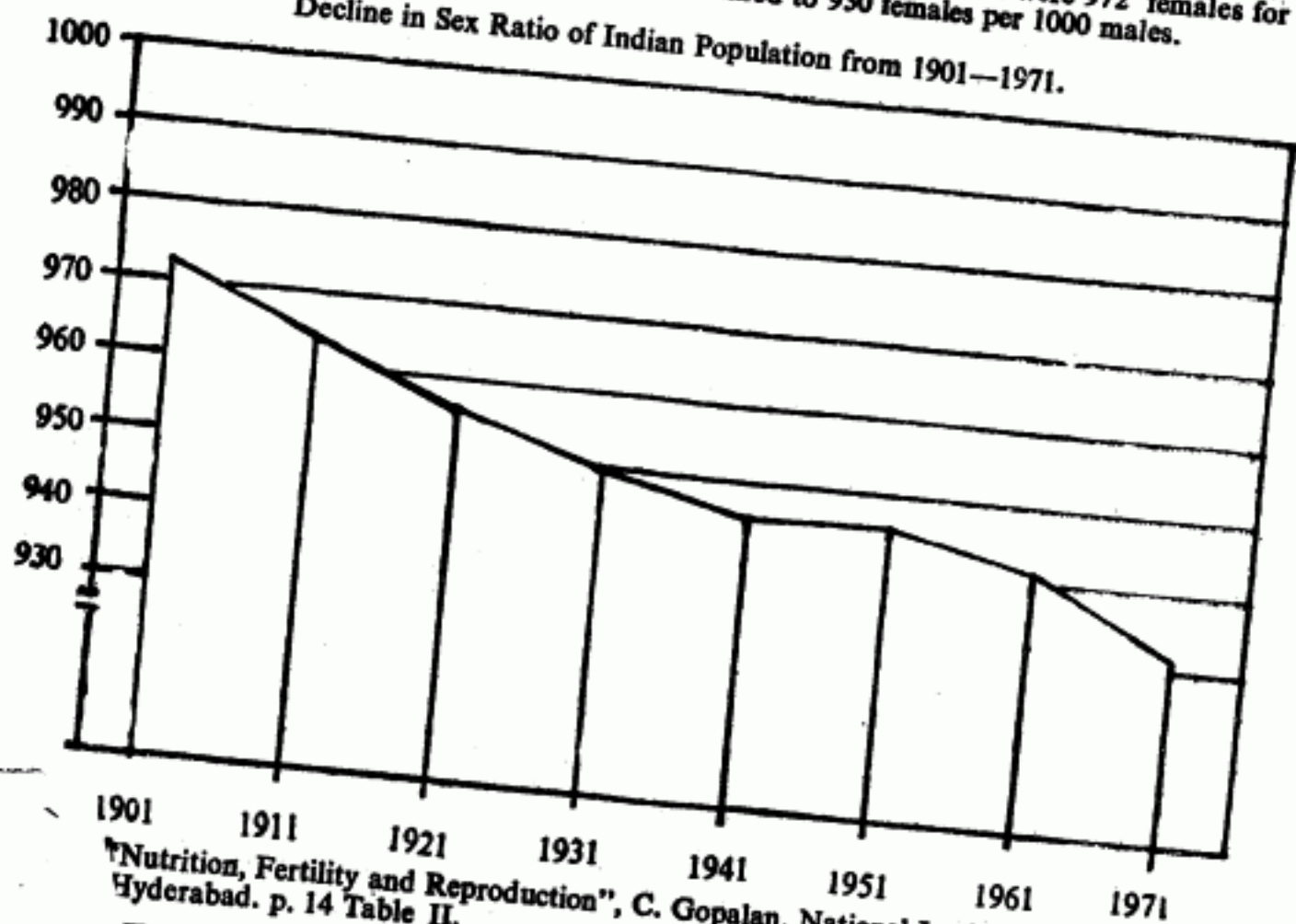
DEMOGRAPHIC PERSPECTIVE

2.01 As early as 1914, in her Preface to a book on population, Annie Besant drew pointed attention to the statistics on illiteracy, child widows and the terrible death toll of women between 15 and 30. Inviting attention of politicians to the state of affairs, she commended the book "to the thoughtful study of the young politician and to the library table of the older politician as the most valuable and handy book of reference."¹ In spite of the progress made since the book was published sixty years ago, the issues raised by Annie Besant like early marriage, the high mortality rate of women and massive illiteracy still continue. Therefore it is necessary to consider the demographic situation that affect the role of women and indicate to a certain extent their status in Indian society.

Growth of Female Population 1901—1986

2.02 India is the second biggest country in the world in terms of population. This is true of the female population also. In 1971 the female population of India was 264 millions—much more than the total population of the USSR or the USA. In 1901, the female population of India was 117 millions. Thus over these seven decades (1901-71), the female population increased by 147 millions or by 126%. Compared to this, the male population increased by 163 millions or by 130%. This differential growth has brought about a decline in the sex ratio—the number of females per 1000 males. In 1901 there were 972 females for every 1000 males in India. In 1971 the ratio declined to 930 females per 1000 males.

Decline in Sex Ratio of Indian Population from 1901—1971.



¹Nutrition, Fertility and Reproduction", C. Gopalan, National Institute of Nutrition, Hyderabad. p. 14 Table II.

²aya Kamath, *Census of India—An Analysis and Criticism*, Theosophical Publishing House Madras, and by Annie Besant.)

TABLE 1 :

Growth of female population in India 1901-71 (in millions)

Year	Total population	Male population	Female population	Females per 1000 males
1901	238	121	117	972
1911	252	128	124	964
1921	251	128	123	955
1931	279	143	136	950
1941	319	164	155	945
1951	361	186	175	946
1961	439	226	213	941
1971	548	284	264	930

Unlike the USSR, USA, most western countries and Japan, in India the male population exceeds the female population. The male population has always grown at faster rate than the female population ever since 1901 except during 1941-51. In this decade it was affected by the partition of India, and both the male and female population grew more or less at the same rate.

2.03 During 1911-21 there was an actual decrease in the population of India. But the overall figure for India conceals the fact that during this decade there was a negligible increase in the male population and a decrease in the female population. The main reason for the decrease in population of India during this decade was the heavy toll taken by the influenza epidemic of 1918. In this decade, mortality was specially high among the adults and particularly among adult females, the disease being generally fatal to women in pregnancy. The report on the 1921 Census pointed out that "the high mortality among women may have been due to the fact that in addition to the ordinary tasks of the house on them, fall the duty of nursing the others even when themselves ill. The figures show that the excess mortality between ages 20 and 40 amounted in some cases to nearly four times the mean." The last decade (1961-71) recorded the highest ever growth rates for both males and females.

TABLE 2 :

Decennial growth rates of population by sex, India, 1901-71

Year	Total	Male	Female
1901-11	5.73	6.28	5.40
1911-21	0.30	0.13	0.75
1921-31	11.00	11.18	10.59
1931-41	14.23	14.52	13.92
1941-51	13.31	13.34	13.49
1951-61	21.64	21.97	21.29
1961-71	24.80	25.52	24.03

2.04 According to official estimates, the total population of India in 1974 (as on 1 March) was 581 millions—301 million males and 280 million females. The projections upto 1986 are as follows:

TABLE 3 :

Population projections upto 1986 (in millions)

Year	Total	Males	Females
1979	626.8	329.5	307.3
1984	685.8	354.1	331.7
1986	705.2	363.9	341.3

2. Extracts from All India Report 1921, reproduced in *Census of India 1951, Volume I, Part I-B, p. 289.*

2.05 This implies that in the next 12 years the total population of India is expected to increase by 124 millions or by 21.3%. The male population is estimated to increase by 63 millions or by 20.9% while the female population is expected to increase by 61 millions or by 20.2%. Of course, the validity of the projections depends on the fulfilment of the assumptions regarding the reduction in mortality and fertility. The sex ratio in 1986 according to these projections is estimated to be 938 females per 1000 males. This implies an improvement in the sex ratio and a reversal of the most persistent trend of Indian population change for nearly a century.

The Declining Sex Ratio

2.06 The decline in the sex ratio ever since 1901 is a disturbing phenomenon in the context of the status of women. Demographers put forward various hypotheses to explain this, like (a) higher under-enumeration of females in the Indian census; (b) the higher mortality rate of females; (c) the marked preference for sons and the consequent neglect of female infants; (d) the lower status of women and the general neglect of women at all ages; (e) the adverse impact of frequent and excessive child-bearing on the health of women; (f) the higher incidence of certain diseases in women. In the absence of adequate and reliable data, however, it is not possible to arrive at any firm conclusion on the causes of this decline.

2.07 All over the world, more boys are born than girls and this is true of India also. But in the developed countries, more boys die than the girls or in other words, the survival rate and the expectation of life at birth is higher among females. But in India, more boys are born than girls but more girls die than boys and the expectation of life at birth is lower for females.

2.08 The explanation which seems to have received general acceptance is that due to improvement of health services in the last few decades the reduction in mortality has been greater for males than females. The differential improvement in health conditions must have contributed substantially to the decline in sex ratio³. This raises the whole question of the attitudes towards females and the role of women in Indian society which we discuss in the later chapters. The fact that our statistics provide little information on this subject, only strengthens the hypothesis that the neglect of women in India is a persistent phenomenon.

2.09 As early as 1871, the census report of India observed: ".....in most parts of India proper there is a tendency to omit from the census record girls aged from 9 to 15 and wives from 15 to 20, or thereabouts....apart from wilful or ignorant omission, there is probably a real deficiency in the number of females, extending to about twentieth year, more or less due to neglect, functional excitement, premature cohabitation and unskilful midwifery. At a later

TABLE 4 :
Sex ratio by age-groups, India, 1971* Females per 1000 males

Age groups	Total	Rural	Urban
All ages	931	951	857
0-4	969	972	953
5-9	935	935	931
10-14	887	885	895
15-19	883	896	839
20-24	1,008	1,074	830
25-29	1,027	1,078	863
30-34	990	1,045	811
35-39	916	949	802
40-44	882	922	737
45-49	839	876	705
50-54	848	868	761
55-59	867	882	801
60-64	923	926	908
65-69	916	921	895
70+	961	957	978
Age not stated	1,050	1,068	972

*Figures are provisional, Estimated from 1 per cent sample data

3. Chapter VIII Section II contains a discussion on health services and facilities available for women and their utilisation.

period hard work as well as the results of the above influences and amongst some classes excessive fecundity tell on the female constitution, providing greater relative mortality....."⁴

Sex Ratio by Age Groups

2.10 There are more males than females in all groups in India except the age group 20-29 years. This is borne out by the statewise figures though the state figures are affected by internal migration.

TABLE 5 :

Sex ratio in the age group 20-29, States, 1971

<i>State</i>	<i>1000 males</i>
All India	1,002
Andhra Pradesh	1,063
Assam	940
Bihar	1,084
Gujarat	977
Haryana	930
Himachal Pradesh	1,074
Jammu & Kashmir	925
Kerala	1,057
Madhya Pradesh	1,013
Maharashtra	980
Manipur	973
Meghalaya	1,072
Mysore	1,014
Nagaland	782
Orissa	1,076
Punjab	884
Rajasthan	999
Tamil Nadu	1,057
Tripura	1,041
Uttar Pradesh	994
West Bengal	899

It is worth noting that even in 1891 the census reported 1071 females per 1000 males in the age group 20-24. Though the phenomenon of excess females over males in

4. Quoted in D. Natarajan. *Changes in Sex Ratio, Census Centenary Monographs No. 6, Census of India—1971*, New Delhi, 1971 p.37

the age group 20-24 has persisted, the sex-ratio even in this group has worsened to 1008 in 1971.

2.11 The rural-urban differential indicated in Table 4 stands out even more clearly in the very low sex ratio of all metropolitan cities.

TABLE 6 :

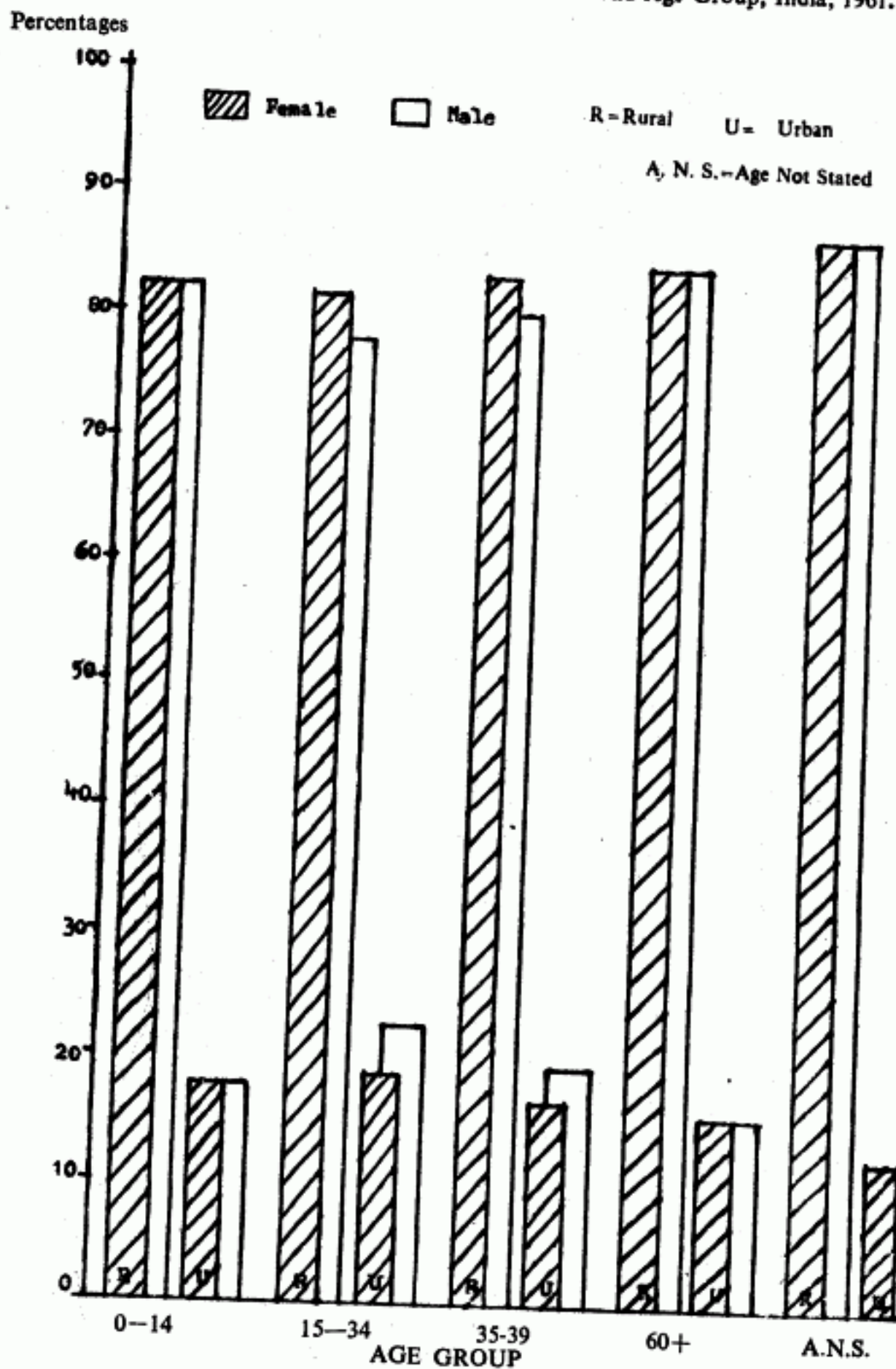
Sex ratio in cities with population of over one million, India, 1971.

<i>City</i>	<i>Females per 1000 males Sex ratio</i>
Calcutta Urban Agglomeration	698
Calcutta (M. Corp.)	636
Greater Bombay (M. Corp.)	716
Delhi Urban Agglomeration	798
Delhi (M. Corp.)	806
Madras Urban Agglomeration	903
Madras (M. Corp.)	904
Hyderabad Urban Agglomeration	917
Hyderabad (M. Corp.)	928
Ahmedabad Urban Agglomeration	830
Ahmedabad (M. Corp.)	833
Bangalore Urban Agglomeration	874
Bangalore City Corporation and Trust Board Area (C)	877
Kanpur City Urban Agglomeration	762
Kanpur (M. Corp.)	769
Poona Urban Agglomeration	861
Poona (M. Corp.)	885

Statewise Differences

2.12 Among all the States of India, Kerala is the only State where females outnumber males in all the decades commencing from 1921. In Orissa and Tamil Nadu this trend persisted till 1961, but the ratio has dropped since then to below 1000. The lowest sex ratio recorded during these five decades was in Punjab where it was only 821 in 1921. Though it increased to 874 in 1971 it continues to be the lowest among all the States of India.

Rural-Urban Proportions, Sex-Wise in Each Broad Age Group, India, 1961.



Source: "Studies in India's Urbanization 1901-1971" Dr. Ashish Bose, P. 285.

The gap between the male and female expectation of life has actually been increasing in the last five decades. This again is a distressing phenomenon. When we consider the expectation of life at different ages for the period 1951-61 (for which published figures are available) we find that at all ages below 40, the expectation of life is lower for females.

TABLE 10 :
Expectation of life at different ages for males and females, India, 1951-60

<i>Age</i>	<i>Males</i>	<i>Females</i>
At birth	41.89	40.55
1	48.42	46.02
2	48.92	46.75
3	49.11	47.12
4	49.03	47.19
5	48.72	47.01
10	45.21	43.78
15	40.99	39.61
20	36.99	35.63
25	32.98	31.60
30	29.03	27.86
35	25.33	24.89
40	22.07	22.37
45	19.15	19.91
50	16.45	17.46
60	11.77	12.98
70	8.07	9.28

Mortality Pattern

2.16 It is generally held that the figures for the registered birth rates and death rates are not too reliable. The figures yielded by the Sample Registration System (SRS) introduced recently by the Registrar General are much more reliable. On the subject of differential infant mortality rates, the evidence is rather conflicting. According to SRS data for rural areas of 12 States of India as a whole, the infant mortality rate for females was 148 per 1000 live births compared to 132 for males. The neo-natal mortality rate, according to SRS data of 1969, was 74 per 1000 for males and 76 for females, while post neo-natal mortality rate was 59 for males and 72 for females.

2.17 In some States the male mortality rates were higher than the females. In the rural areas of Uttar Pradesh, the female infant mortality rate was very much higher, but not so in urban areas. In Punjab it was higher both in rural and urban areas. While the evidence from SRS data is occasionally conflicting when one considers individual States, it is a safe generalisation that the infant mortality rate is higher among females in the rural areas of India as a whole.

Expectation of Life At Birth

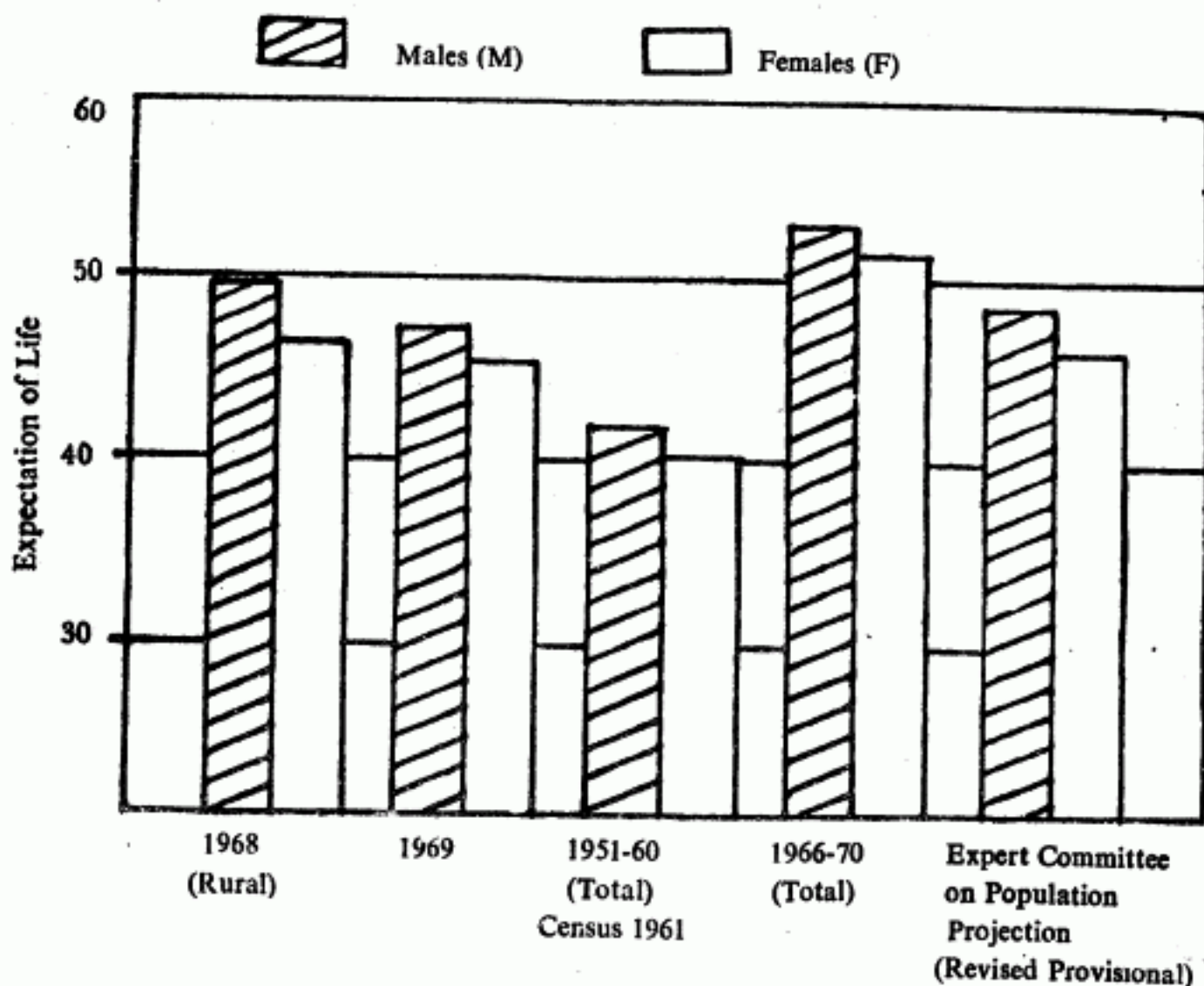
2.15 According to the actuarial estimates in the 1961-71 decade, the expectation of life was 47.1 years for males and 45.6 years for females.

TABLE 9 :

Expectation of Life at Birth 1921-71

<i>Decade</i>	<i>Male</i>	<i>Female</i>
1921-31	26.9	26.6
1931-41	32.1	31.4
1941-51	32.4	31.7
1951-61	41.9	40.6
1961-71	47.1	45.6

Expectation of life at birth, Rural 1968 and 1969.



Source: Measures of Fertility and Mortality in India. Vital Statistic Division. Office of the Registrar General S.R.S. Analytical Series No. 2. 1972. p. 23.

TABLE 7 :
Sex ratio in States, 1921-71
Females per 1000 males

State	1921	1931	1941	1951	1961	1971
Andhra Pradesh						
Assam	993	987	980	986	981	977
Bihar	908	886	886	877	876	901
Gujrat	1,016	994	996	990	994	956
Jammu & Kashmir	944	945	941	952	940	936
Kerala	870	865	869	873	878	882
Madhya Pradesh	1,011	1,022	1,027	1,028	1,022	1,019
Maharashtra	974	973	970	967	953	943
Mysore	950	947	949	941	936	932
Orissa	969	965	960	966	959	959
Punjab	1,086	1,067	1,053	1,022	1,001	989
Rajasthan	821	830	850	858	864	874
Tamil Nadu	896	907	906	921	908	919
Uttar Pradesh	1,029	1,027	1,012	1,007	992	979
West Bengal	909	904	907	910	909	883
	905	890	852	865	878	892

2.13 It is not always possible to relate sex ratios with factors like literacy or educational level because the evidence is sometimes conflicting. Our investigation has persistently revealed the meaninglessness of national and state averages in determining the actual conditions and status of women in the country, in the context of the gross inequalities and wide variations in socio-economic factors that influence women's lives. The answer may lie in identifying the actual groups, by socio-economic status, or regional or communal origin, which contribute the main thrust in shaping these averages. For example, investigations in mortality, malnutrition etc., must examine differences of these trends in different levels of society to expose their true nature. Some of the studies of the National Institute of Nutrition, Hyderabad provide pointers in this direction.

2.14 For the sake of comparison, we give below sex ratio in selected countries of the world. (It will be observed that in countries like USSR, U.K., U.S.A., Japan and also in the Philippines and Indonesia, the sex ratio is over 1000. In other words there are more females than males in these countries.)

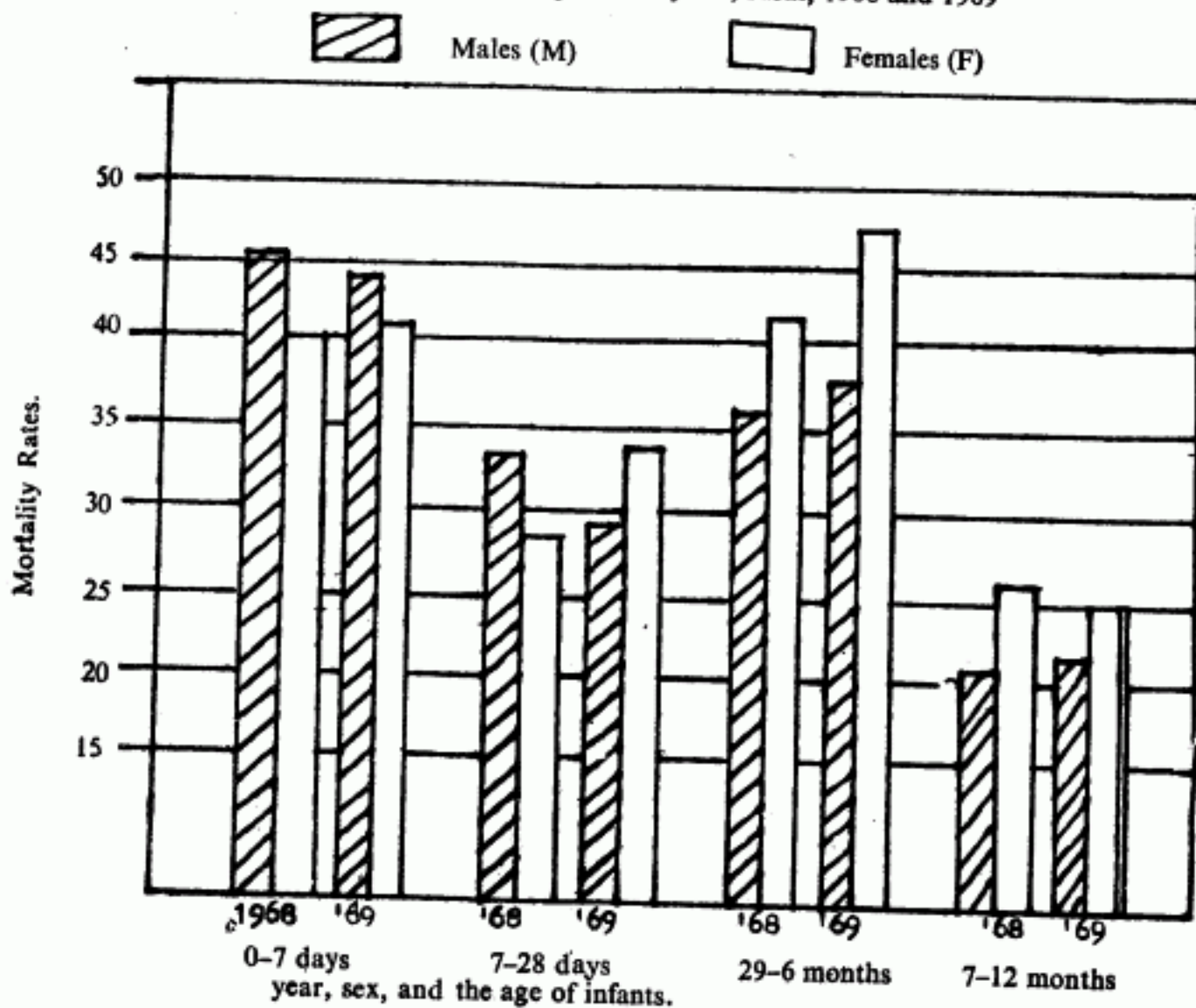
TABLE 8 :
Sex ratio in selected countries

Country	(Females per 1000 males) Sex-ratio
U. S. A. (1970)	1054
Argentina (1970)	1014
Brazil (1970)	1011
China (1953)	930
Indonesia (1971)	1018
Iran (1966)	932
Japan (1970)	1037
Pakistan (1961)	900
Philippines (1970)	1010
Czechoslovakia (1970)	1053
Hungary (1970)	1064
Italy (1961)	1063
Poland (1970)	1058
Spain (1970)	1049
U. K. (1971)	1060
Australia (1971)	988
U.S.S.R. (1970)	1170

TABLE 11 :
Infant mortality rates for selected States (SRS) 1969

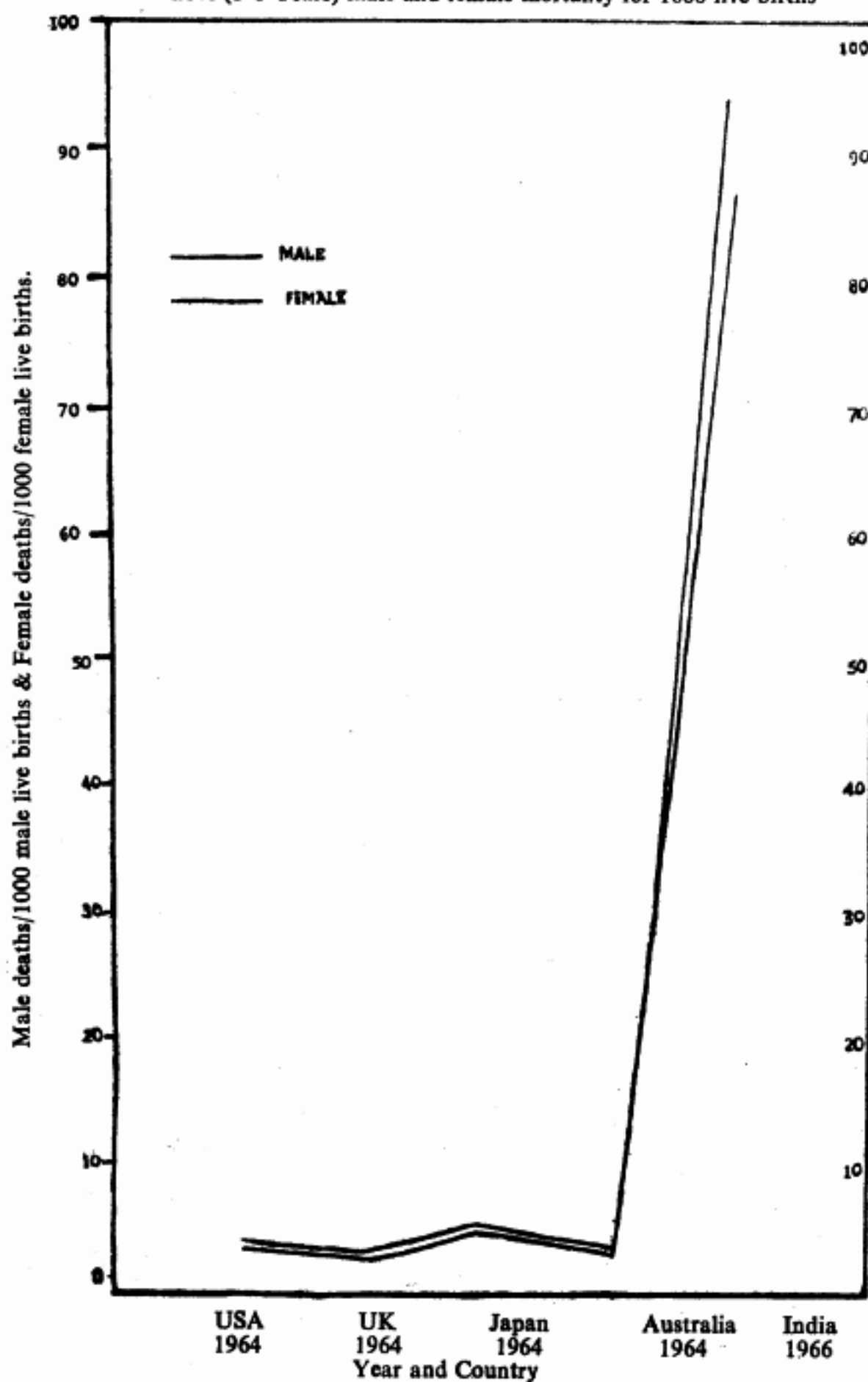
State	Rural		Urban	
	Males	Females	Males	Females
Andhra Pradesh	131.7	126.0	—	—
Assam	154.2	104.4	110.7	92.4
Gujarat	153.2	177.8	—	—
Haryana	82.9	76.1	—	—
Jammu & Kashmir	106.3	98.9	—	—
Kerala	64.8	48.5	79.1	40.5
Maharashtra	101.0	113.4	—	—
Mysore	114.5	104.4	—	—
Punjab	80.9	115.9	60.1	54.4
Rajasthan	167.6	170.2	70.3	86.7
Tamil Nadu	115.0	109.8	97.0	84.2
Uttar Pradesh	153.9	205.9	—	—
Estimates for all the 12 States	132.3	148.1	119.0	99.7

Infant mortality and its components by sex, rural, 1968 and 1969



Source: Measures of fertility and Mortality in India. Vital Statistics Division, Office of the Registrar General, SRS Analytical Series 2. 1979 p. 19

Pre-school (1-5 Years) male and female mortality for 1000 live births



Source : "Nutrition, Fertility and Reproduction" C. Gopalan. Table 3. p. 15

Age Specific Mortality

2.18 Table 12 indicates that for the age group 5—14 as a whole, the female death rate is 5.3 per thousand compared to 4.5 for males. In the youngest age group 0—4, while the male death rate is 58 per thousand, the female death rate is 70 per thousand; whereas in the oldest age group 70 and above, the male death rate is 123 per thousand, and the female death rate 119.5 per thousand. In the five yearly age groups from 0—4 to 30—34, the female death rates are higher than male, except in the age group 10—14, while in the age groups 35—39 and above the male death rates are higher than female. The overall position, however, is that in rural India in 1969 there were 18 deaths per thousand for males and 20 deaths per thousand for females.

TABLE 12 :
Age-specific death rates, rural India, 1969

Age-group	Males	Females
0-4	58.3	70.2
5-9	5.8	7.4
10-14	3.0	2.7
5-14	4.5	5.3
15-19	2.1	4.2
20-24	3.9	5.5
25-29	3.7	5.5
30-34	4.1	6.4
35-39	6.5	6.1
40-44	8.5	7.6
45-49	13.2	9.4
15-49	5.3	6.1
50-54	18.7	16.2
55-59	28.3	20.2
60-64	44.0	38.7
65-69	59.9	52.2
70+	123.0	119.5
Total	18.2	20.1

+ Age-specific death rate : Number of deaths in a year in any specified age group per 1,000 persons in that age-group.

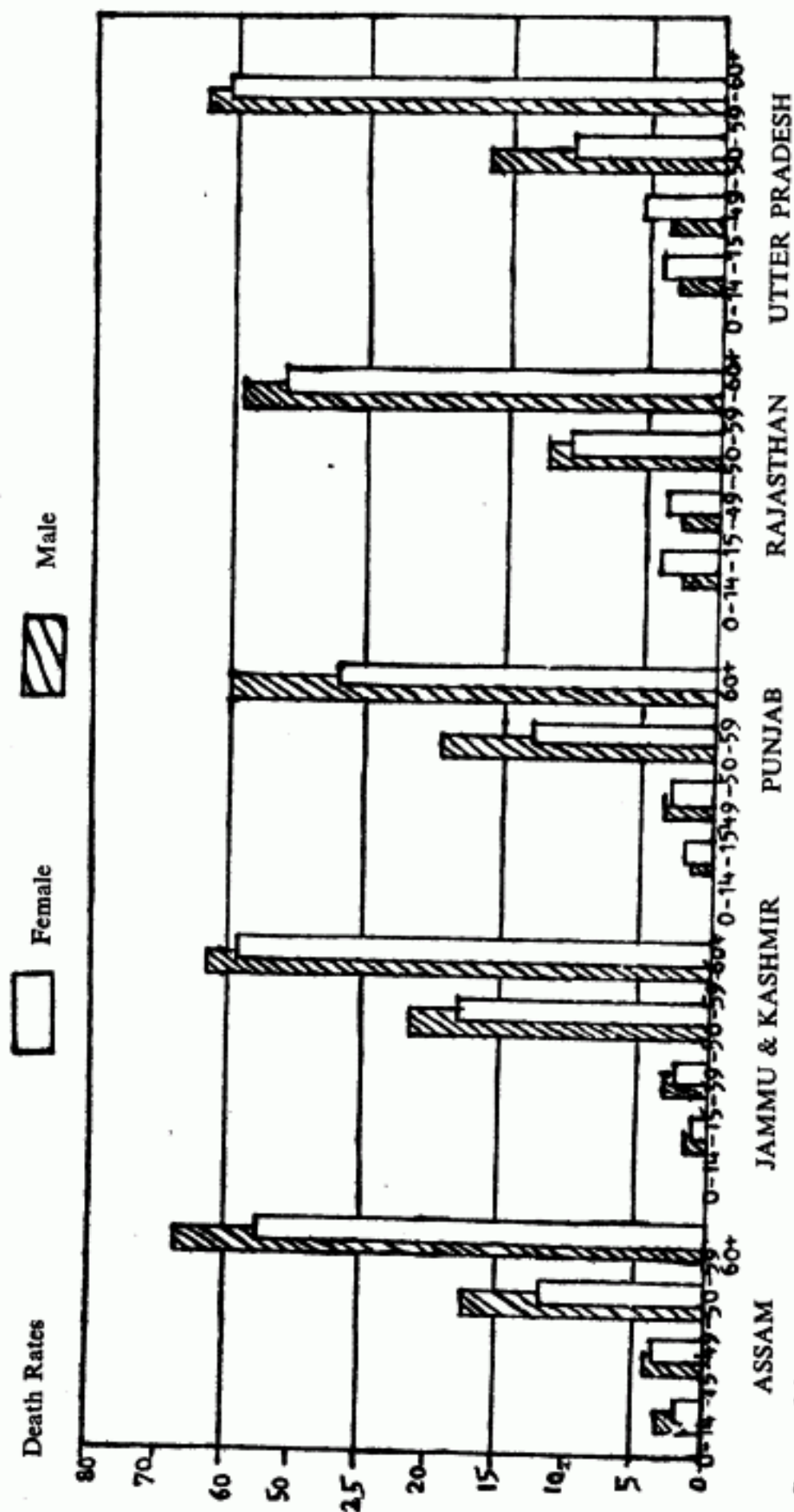
Age Distribution

2.19 The youthfulness of India's population is brought out by the fact that 42% of the population is below 15 while nearly 59% of the population is below 25. Persons over 60 account for only 6% of the population. The proportion of female population below 15 is a little higher than that of males. The same is true of the proportion of females below 25 and above 60.

TABLE 13 :
Age composition of population, India, 1971

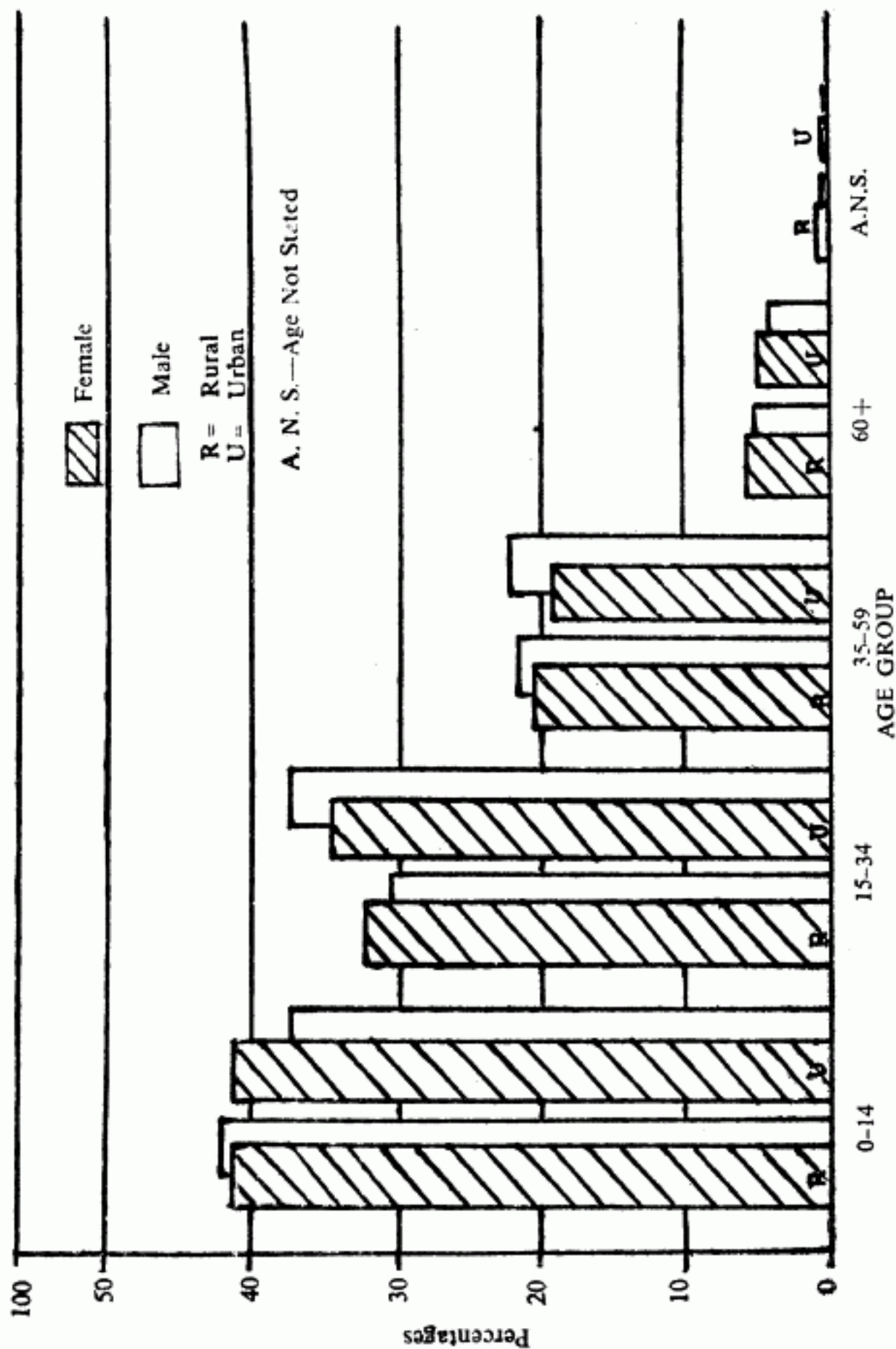
Age-groups	(percentages)		
	Males	Females	Total
0-14	41.9	42.2	42.0
15-19	8.9	8.4	8.7
20-24	7.6	8.2	7.9
25-29	7.2	7.8	7.4
30-39	12.5	12.6	12.6
40-49	9.7	9.0	9.3
50-59	6.3	5.8	6.1
60+	5.9	6.0	6.0
Total	100.0	100.0	100.0

AGE SPECIFIC DEATH RATE, SEX-WISE, URBAN, 1969.



Source: Measures of Fertility and Mortality in India. Vital Statistics Division, Office of the Registrar General. S.R.S. Analytical Series No. 2-1972. P. 76

AGE STRUCTURE, SEXWISE, RURAL & URBAN, INDIA, 1961



Source: "Studies in India's Urbanization 1901-1971" Dr. Ashish Bose, p. 283

Age At Marriage

2.20 The 1971 Census asked a direct question on age at marriage of all currently married women for the first time in the history of census operations in India. The relevant data is not yet available. Estimates on the average age at marriage, however, have been made on the basis of census data on marital status distribution and age distribution. According to these estimates, the average age at marriage for males has increased from 20.2 during 1901-11 to 22.2 during 1961-71. In the case of females, the comparable figures are 13.2 and 17.2. In other words, during these seven decades, the average age at marriage has gone up by two years in the case of males and by four years in the case of females.

TABLE 14 :
Mean age at marriage, India, 1901-1971

<i>Decade</i>	<i>Males</i>	<i>Females</i>
1901-11	20.2	13.2
1911-21	20.5	13.6
1921-31	18.4	12.6
1931-41	20.2	15.0
1941-51	19.8	15.4
1951-61	21.4	16.1
1961-71	22.2	17.2

TABLE 15 :
*Mean age at marriage, India, 1961-71**

	<i>Males</i>	<i>Females</i>
Rural	21.6	16.7
Urban	24.3	19.2
Total	22.2	17.2

*Based on 1 per cent Sample data :

2.21 In rural areas the mean age at marriage for males is higher than that of females by 4.9 years. The difference is even higher in the urban areas, namely, 5.1 years, though the rural-urban differences are small. A detailed analysis of the estimates of the mean age at marriage in different districts of India based on marital status data in the 1961 census reveals that in more than one-third of the total number of districts in India in 1961, the average age at marriage of females was below 15. Most of these districts are in the States of Madhya Pradesh, Bihar, Rajasthan, and Uttar Pradesh.

TABLE 16 :
Number of districts in each state where the average age at marriage of females was below 15 years in 1961

<i>State</i>	<i>Total No. of districts</i>	<i>No. of districts with average age at marriage of females below 15</i>	<i>Per cent of total No. of districts</i>
Madhya Pradesh	43	33	77
Bihar	17	12	71
Rajasthan	26	17	65
Uttar Pradesh	54	26	48
Andhra Pradesh	20	7	35
West Bengal	16	5	31
Maharashtra	26	8	31
Mysore	19	3	16
INDIA	318	112	35

TABLE 17 :

Number of districts in each state where the average age at marriage of females was below 20 years in 1961

<i>State</i>	<i>Total No. of districts</i>	<i>No. of districts where the average age at marriage of females was below 20 years</i>	<i>Per cent of total No. of districts</i>
Andhra Pradesh	20	20	100
Bihar	17	17	100
Gujarat	17	17	100
Maharashtra	26	26	100
Madhya Pradesh	43	43	100
Mysore	19	19	100
Orissa	13	13	100
Rajasthan	26	26	100
Uttar Pradesh	54	54	100
Punjab	19	18	95
West Bengal	16	15	94
Madras	13	12	92
Jammu & Kashmir	9	8	89
Assam	11	7	64
Kerala	9	3	33
INDIA	318	303	95

Marital Status Of The Female Population

2.22 There is some indirect evidence that the age at marriage is going up judged by the proportion of unmarried at a point of time. This is revealed by comparison of the figure of the percentage distribution of female population aged 10 and above by marital status in 1961 and 1971. It will be seen that 17.2% of the female were unmarried in 1961 compared to 22.0% in 1971. This resulted in a decrease in the percentage of married women. The relevant figures are 66.5% in 1961 and 64.9% in 1971. A general improvement in the expectation of life and a greater incidence of widow re-marriages might have resulted in a decrease in the proportion of widowhood. The percentage of widows decreased from 15.5% in 1961 to 12.5% in 1971. The census figures indicate a trend towards a decrease in the incidence of divorce and separation from 1961 to 1971. Apart from their insignificance compared to the total female population these figures may not be very reliable. Social attitude in our view to divorce or separation is such that women in particular would not always be prepared to admit their separated status to strangers. As figures on the number of marriages are not available, it is not possible to work out the divorce rate.

TABLE 18 :

Percentage distribution of female population aged 10 years and above by marital status, India, 1961 and 1971

<i>Marital Status</i>	<i>Years</i>	<i>Rural</i>	<i>Urban</i>	<i>Total</i>
Unmarried	1961	15.8	24.2	17.2
	1971	20.2	29.2	22.0
Married	1961	67.5	61.1	66.5
	1971	66.3	59.3	64.9
Widowed	1961	15.8	14.0	15.5
	1971	12.9	11.0	12.5
Divorced/ Separated	1961	0.8	0.6	0.7
	1971	0.5	0.4	0.5
Unspecified Status	1961	0.1	0.1	0.1
	1971	0.1	0.1	0.1

2.23 It is most unfortunate the 1961 and 1971 Censuses did not tabulate data by marital status for the age group 0-9, and assumed that no marriages take place below the age of 10. The incidence may be low, but we did come across several girls below 10 who were already married. We hope that this lacuna will be remedied at the next census so that the incidence of child marriage may be measured. An indirect evidence of child marriage is furnished by the data for the age group 10-14. In 1971, in rural India 13.6% of the girls in the age group 10-14 were married and 0.1% were widows, while in urban India, 3.9% were married and

TABLE 19:
Percentage distribution of female population by age, marital status and residence, India 1971

Age Group	Total Rural Urban	Never married	Married	Widowed	Divorced and separated	Un-specified.
0-9	Total	100.00	—	—	—	—
	Rural	100.00	—	—	—	—
	Urban	100.00	—	—	—	0.1
10-14	Total	88.1	11.7	0.1	—	0.1
	Rural	86.2	13.6	—	—	0.3
	Urban	95.8	3.9	—	—	0.1
15-19	Total	42.9	56.3	0.3	0.4	0.1
	Rural	36.9	62.2	0.4	0.4	0.2
	Urban	63.8	35.6	0.2	0.2	—
20-24	Total	9.1	89.4	0.9	0.6	—
	Rural	6.2	92.1	1.0	0.7	0.1
	Urban	19.1	79.7	0.7	0.4	—
25-29	Total	1.9	95.6	1.9	0.6	—
	Rural	1.3	96.1	1.9	0.7	—
	Urban	4.5	93.5	1.5	0.5	—
30-34	Total	0.9	94.5	3.9	0.7	—
	Rural	0.6	94.6	4.1	0.7	—
	Urban	1.9	94.1	3.5	0.5	—
35-39	Total	0.6	91.7	7.0	0.7	—
	Rural	0.4	91.7	7.2	0.7	—
	Urban	1.1	92.1	6.2	0.6	—
40-44	Total	0.6	84.5	14.2	0.7	—
	Rural	0.5	84.5	14.3	0.7	—
	Urban	1.0	84.9	13.5	0.5	—
45-49	Total	0.4	78.5	20.4	0.7	—
	Rural	0.3	78.7	20.3	0.7	0.1
	Urban	0.9	77.7	20.9	0.7	0.1
50-54	Total	0.4	62.5	36.5	0.5	—
	Rural	0.4	62.8	36.3	0.5	0.1
	Urban	0.8	60.9	37.7	0.5	—
55-59	Total	0.4	58.1	41.1	0.4	0.1
	Rural	0.3	58.7	40.5	0.4	0.1
	Urban	0.6	55.1	43.7	0.5	0.1
60-64	Total	0.3	36.7	62.5	0.4	—
	Rural	0.3	37.1	62.2	0.4	0.1
	Urban	0.6	34.9	64.0	0.4	0.1
65-69	Total	0.4	34.7	64.5	0.3	0.1
	Rural	0.4	35.1	64.1	0.3	0.1
	Urban	0.7	32.6	66.3	0.3	0.1
70 +	Total	0.5	19.5	79.6	0.3	0.1
	Rural	0.5	19.8	79.4	0.2	0.1
	Urban	0.9	18.4	80.2	0.3	0.2
All ages	Total	45.2	45.6	8.8	0.3	0.1
	Rural	44.3	46.3	9.0	0.4	—
	Urban	48.8	42.9	8.0	0.2	0.1

the number of widows was negligible. Less than 2% of the women in the age group 25-29 and less than 1% in the age group 30-34 were unmarried in the rural areas. The figures also show that 2% of the women in the age group 25-29 and 4% of the women in the age group 30-34 were widows in the rural areas. In 1961, the comparable figures were 3% for the age group 25-29 and 6.6% for the age group 30-34. This indicates that the incidence of widowhood has come down. Nevertheless, early marriage and early widowhood still persist in rural areas though the incidence of both these is on the decline.

2.24 Table 19 indicates that in the age group 10-14, 13.6% of the girls were reported to be married in rural areas and 3.2% in the urban areas. Obviously, this is in contravention of the Child Marriage Restraint Act under which the minimum legal age at marriage for females is 15. The group 25-29 reveals the highest percentage of married females in rural areas, namely, 96.1% whereas in the case of urban areas, it is the next age group i. e. 30-34 which records the highest percentage of married females, namely 94.1%. The incidence of widowhood increased sharply from age 60 onwards. In the age group 60-64, 62.5% of the females are widowed while in the age group 65-69, 64.5% are widowed. In the female population aged 70 and over, almost 80 per cent of the female population is widowed.

Fertility Pattern

2.25. For long-term trends in fertility, we have to rely on actuarial estimates based on census data. Table 20 indicates that there has been a substantial fall in the death rate in the last seven decades but this is not true of the birth rate:

TABLE 20:
Birth and death rate since 1901-1971

Decade	Rate by reversal survival method		By quasi-stable method	
	Birth rate	Death rate	Birth rate	Death rate
1901-11	49.2	42.6	52.4	46.8
1911-21	48.1	47.2	N.A.	N.A.
1921-31	46.4	36.3	50.8	40.4
1931-41	45.2	31.2	46.2	33.5
1941-51	39.9	27.4	43.1	30.0
1951-61	40.9	22.0	40.4	20.9
1961-71*	41.1	18.9	40.0	17.8

N.A. stands for not available

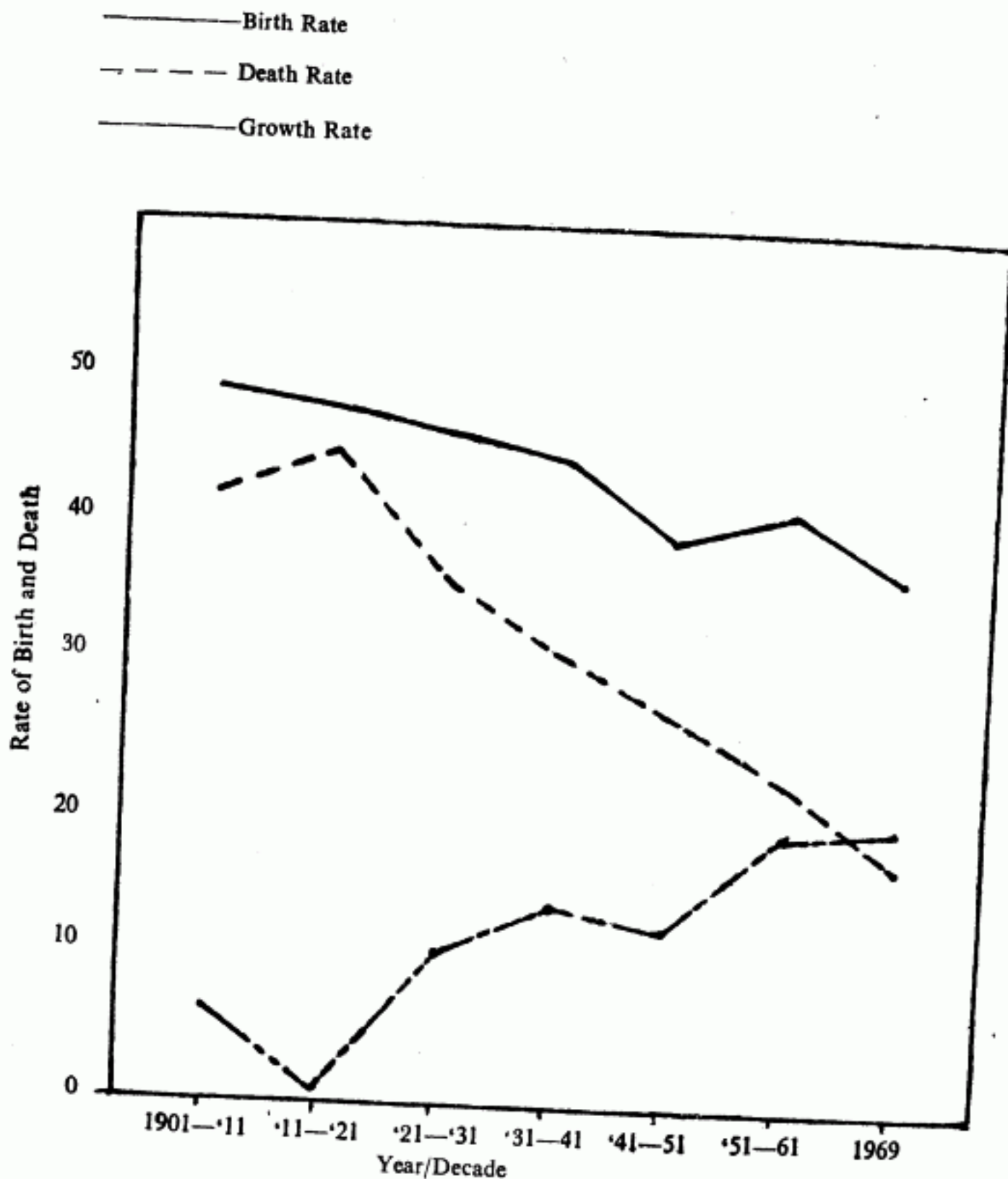
*Provisional. Estimated from 1 per cent sample data. The figures are based on improved methodology and are not strictly comparable with the earlier figures. If no adjustment is made for under-enumeration of certain young age-groups as in the case of the earlier figures, the comparable figures of birth and death rates for the decade 1961-71 would be 39.2 and 17.0 respectively.

2.26 Of late, the Sample Registration Scheme has improved the situation in regard in to data on births and deaths. The yearly figures are given below:

TABLE 21:
Birth rates in India according to SRS data, 1969-72

Year	Rural	Urban	Total
1969	38.8	32.6	37.6
1970	38.9	29.7	36.8
1971	38.9	30.1	36.9
1972	38.4	30.5	36.6

Birth rate and Death rate in India, 1901-69



Source : Measures of Fertility and Mortality in India S.R.S. Analytical Series No. 2 1972, p. 27.

2.27 The SRS data does indicate rural-urban differentials in the birth rate. Some of it could be due to the impact of family planning, especially in the urban areas.

TABLE 22:
Birth rates in States according to SRS data, 1972.

<i>State</i>	<i>Rural</i>	<i>Urban</i>	<i>State</i>	<i>Rural</i>	<i>Urban</i>
Andhra Pradesh	35.7	36.7	Maharashtra	33.5	29.4
Assam*	37.3	27.7	Manipur	30.4	21.9
Bihar	33.6	26.7	Orissa	34.5	31.7
Gujarat	41.8	35.8	Punjab	35.8	30.1
Haryana	42.2	32.4	Rajasthan	43.5	37.2
Himachal Pradesh	33.7	24.0	Tamil Nadu	35.2	25.9
Jammu & Kashmir	34.1	22.4	Tripura	34.0	23.1
Karnataka	32.8	28.0	Uttar Pradesh	44.4	34.0
Kerala	31.5	29.5	West Bengal	N.A.	26.5
Madhya Pradesh	40.4	32.8	INDIA (Pooled)	38.4	30.5

*Including Meghalaya.

2.28 According to SRS data, in rural areas of India in 1969, the average number of children born alive to mothers in the age group 40-44 was 6.4. This gives an idea of the completed family size in rural India. By the time a woman is 35, she has roughly 5 children. Table 23 gives the detailed fertility pattern.

TABLE 23:
Average number of children born alive to current mothers by age groups, Rural India, 1969.

<i>Age group</i>	<i>Average number of children</i>
15-19	1.3
20-24	2.1
25-29	3.5
30-34	4.8
35-39	5.8
40-44	6.4

2.29 Data on order of births (i.e. the sequence in which the live births have occurred) reveals an interesting pattern. Of all the births which took place in rural India in 1969, according to SRS data, 20.5% belong to the first order, 18.1% to the second order and 16.4% to the third order. That is to say, the first three births account for 55 per cent of the total births in rural India. The fertility level could be substantially brought down, therefore, if family size was restricted to three live births.

TABLE 24:
Per cent of live births by birth order, Rural India. 1969.

<i>Birth order</i>	<i>Per cent live births</i>
<i>All orders</i>	100.0
1st	20.5
2nd	18.1
3rd	16.4
4th	14.5
5th	11.6
6th	8.2
7th	5.3
8th	2.8
9th	1.5
10th	1.1

Family Planning

2.30 There has been some progress in the field of family planning in recent years. But the overall situation continues to be unsatisfactory. In States like Punjab, Haryana, Maharashtra and Gujarat, a higher level of performance has been achieved, while in Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh, the success is far from impressive. In India as a whole, family planning is being practised by 15% of the couples in the reproductive age group.

TABLE 25 :
Number of couples protected by family planning in India by the end of the respective year

<i>Year</i>	<i>Estimated No. of couples in reproductive age-group (thousand)</i>	<i>No. couples currently protected No. (Thousand)</i>	<i>P.C.</i>
1966-67	90	3941	4.4
1967-68	92	5868	6.4
1968-69	95	7794	8.2
1969-70	97	9459	9.8
1970-71	99	10895	11.0
1971-72*	102	13045	12.8
1972-73*	102	15364	15.0

*Provisional

TABLE 26:
Percentage of couples protected by various methods of family planning, 1971-72

<i>State</i>	<i>Percentage</i>	<i>State</i>	<i>Percentage</i>
Andhra Pradesh	14.4	West Bengal	9.7
Assam	6.5	Meghalaya	1.1
Bihar	6.3	Nagaland	0.4
Gujarat	18.1	Manipur	3.8
Haryana	18.8	Tripura	5.4
Himachal Pradesh	8.6	A. & N. Islands	7.1
Jammu & Kashmir	8.2	Arunachal Pradesh	
Kerala	18.6	(NEFA)	0.7
Madhya Pradesh	10.6	Chandigarh	18.8
Maharashtra	19.2	D. & N. Haveli	3.4
Mysore	10.0	Delhi	30.4
Orissa	16.9	Goa, Daman & Diu	10.4
Punjab	23.7	L.M. & A. Inlands	3.6
Rajasthan	6.0	Pondicherry	19.6
Tamil Nadu	16.1	Central Govt. Institutions	
Uttar Pradesh	6.5	All India	13.2

2.31 It will be seen that the proportion of protected couples varies from 0.7 per cent in Arunachal Pradesh to 23.7 per cent in Punjab. Broadly speaking, States like Uttar Pradesh, Bihar, Madhya Pradesh and Rajasthan which have very low literacy levels as well as a high proportion of rural population, have the lowest acceptance rate of family planning. However, there are exceptions. For example, Orissa has a fairly good record of family planning which is close to the record of Kerala which has the highest literacy level. But surprisingly, even the almost exclusively urban territories in Delhi and Chandigarh, the acceptance rate is far from high.

Fertility, Family Planning and Education of Women⁵

2.32 A review of some of the latest studies of differential fertility carried out in different parts of India indicates that generally the level of education and fertility are inversely related. The conclusions of the studies with regard to mean fertility at different levels of education are not uniform. The National Sample Survey indicated that at each higher level of education fertility performance is lower. The number of children born alive to couples declined from 4.03 in the case of illiterate husbands to 2.96 in the case of husbands who were intermediate and above. It declined from 3.83 in the case of illiterate wives to 1.61 in the case of wives who were intermediate and above.

2.33 The attitude towards family planning which involves the attitudes of couples towards family size, need for a son, spacing, approval and usage of birth control techniques for limiting the number of children or delaying pregnancies, has been found to be closely associated with the educational attainment of couples in all the major surveys undertaken so far in India. The nation-wide survey covering entire India excepting a few places like Jammu and Kashmir by the Operations Research Group (ORG), Ministry of Health and family Planning, during July 1970 to January 1971, clearly indicated that as the educational level increases the attitude towards family planning tends to become more favourable. The survey notes that 46.5% of the illiterate wives disapproved birth control methods as against only 6.4% wives who had gone to college.

2.34 The positive association between levels of educational attainments of couples and the three aspects of family planning: knowledge, attitude and practice, stems from the increased interpersonal communication and exposure to mass media of people who are more educated than the others. The ORG study observed that only 14% of the illiterate, married women in the reproductive age group had inter-spouse communication with regard to the planning of the family, whilst 68.6% women who had gone to college in the same age-group had inter-spouse communication.

2.35 In spite of the differences of the size and characteristics of the samples used in different surveys and different levels of education used by them as the basis of analysis, the paramount role of education as a factor influencing all the spheres of family planning, emerges clearly.⁶

Literacy and Education

2.36 One of the dismal features revealed by the 1971 Census is the extremely low literacy rate. It was 18.7% for females, 39.5% for males and 29.5% for the total population. The highest literacy rate for females, 37.4% was in the age group 10—14, while the highest literacy rate for males, 63% was in the age group 15—19. This shows the higher incidence of literacy in the younger generation. However a sensitive index of literacy is the female literacy in rural areas. The rural female literacy rate in India is only 13.2% while the urban female literacy rate is 42.3%. Kerala has the highest literacy rate both in rural and urban areas while Rajasthan has the lowest literacy rate both in urban and rural areas. The position is equally appalling in Bihar, Madhya Pradesh and Uttar Pradesh. A detailed analysis based on the district data reveals that out of the 352 districts in India, in 83 districts the female literacy rate in the rural area is less than 5% and there are another 113 districts where the female literacy rate is between 5 and 10%. Of the 83 districts belonging to the first category, 64 belong to the States of Uttar Pradesh, Rajasthan, Bihar and Madhya Pradesh. Of the 113 districts belonging to the later category, Uttar Pradesh, Bihar, Madhya Pradesh and Andhra Pradesh account for 73 districts.⁷

5. This selection is based on a paper prepared by Atreyi Chatterjee and Jatinder Bhatia on "Fertility, Family planning and Education of Women in India" 1974 (mimeo.).

6. This is discussed further in Chapter VIII

7. O.P. Sharma Regional Nov. 1971.

TABLE 27 : *Literacy rates by age-groups, India, 1971*

Age-groups	Males	Females	Total
5-9	26.7	18.5	22.8
10-14	60.3	37.4	49.7
15-19	63.0	36.9	50.8
20-24	59.8	27.9	43.8
25-34	49.3	18.8	33.9
34+	37.0	10.4	24.5
Total	39.5	18.7	29.5

TABLE 28 : *Female literacy rates in rural and urban areas, 1971*

States	Rural	Urban	Total
All India	13.2	42.3	18.7
Andhra Pradesh	10.9	36.3	15.8
Assam	16.5	50.9	19.3
Bihar	6.4	31.9	8.7
Gujarat	17.2	44.8	24.8
Haryana	9.2	41.5	14.9
Himachal Pradesh	18.2	52.2	20.2
Jammu & Kashmir	5.0	28.4	9.3
Kerala	53.1	60.6	54.3
Madhya Pradesh	6.1	37.0	10.9
Maharashtra	17.8	47.3	26.4
Manipur	16.4	40.4	19.5
Meghalaya	18.9	59.7	24.6
Karnataka	14.5	41.6	21.0
Nagaland	16.4	49.5	18.7
Orissa	12.1	36.1	13.9
Punjab	19.9	45.4	25.9
Rajasthan	4.0	29.7	8.5
Tamil Nadu	19.0	45.4	26.9
Tripura	17.3	55.0	21.2
Uttar Pradesh	7.0	34.4	10.7
West Bengal	15.0	47.8	22.4

2.37 Among the total female literates, 40% have no educational level (they are really semi-literates), 7.8% are matriculates while only 1.4 per cent are graduates and above. The great majority of Indian women are illiterate or semi-literate and only an insignificant fraction of is educated⁸. The image of the Indian woman created by a few women holding high positions or academic qualifications is only that of a small elite group and does not, in any way, reflect the actual position.

TABLE 29 : *Distribution of literates by educational level 1971*

Educational level	Total	Males	Females
Total literates	100.0	100.0	100.0
Literates without educational levels	36.9	35.4	40.3
Literates with educational levels	63.1	64.6	59.7
Primary	31.5	30.5	34.2
Middle	18.0	18.8	16.0
Matriculation or higher-secondary	11.0	12.3	7.8
Non-tech. diploma or certificate not equal to degree	0.1	0.1	0.1
Technical diploma or certificate not equal to degree	0.3	0.3	0.2
Graduates and above	2.2	2.6	1.4

8. This is discussed in detail in Chapter VI.

Women At Work

2.38 According to the 1971 Census, there were 31 million women workers in India, out of which 28 millions were in rural areas and 3 millions in urban areas. In rural areas, the great majority of women workers, namely, 87% were engaged in agriculture and less than 2% were engaged in manufacturing industries other than household industries. In the urban areas, the service sector claimed the largest percentage of women workers, namely 38%, followed by agricultural labour 17.5%, while manufacturing industries other than household industries accounted for about 13% of the female workforce.

2.39 In rural areas 13% of the women were in the workforce while in urban areas the comparable figure was less than 7%. Unlike western countries, even in the biggest cities, the participation rate for women does not exceed 9%. In western countries the service sector is generally "manned" by women. Of late, in several Asian cities, women are being increasingly employed in the service sector but women continue to play a minor role in the urban workforce in India. The norms of social status of women and notions of social respectability condition the employment of women, especially married women in non-household industries and the service sector. Conservative families have little hesitation in allowing women to work as teachers and doctors but would hesitate to see women working as shop assistants and office girls. However, there is some evidence that under the impact of economic necessity and the gradual process of modernization, the attitude towards such work is less rigid now, at least in the urban areas. But it is difficult to say if the attitudes are changing in the rural areas.

2.40 More than 89 per cent of the women workers are illiterate. According to the census, the non-workers were divided into a number of categories. In the case of women, household duty was recorded as the main activity of 51% of the total number of non-working women. In the age group 15-59 household duty was recorded as the main activity of 73.5% of the women in that age group. In the rural areas 73% of the women in the age group 15-59 reported household duties as their main activity while in the urban areas comparable figure

TABLE 30 :

Distribution of women workers into nine industrial categories, 1971.

Industrial categories	Total	Rural % of total	Total	Urban % of total	(figures in thousands)	
					Total	Total % of total
I Cultivators	9,127	32.6	139	4.2	9,266	29.6
II Agricultural labourers	15,211	54.4	584	17.5	15,795	50.4
III Livestock, forestry, fishing, hunting, and plantations, orchards and allied activities	715	2.6	68	2.0	783	2.5
IV Mining and quarrying	91	0.3	33	1.0	124	0.4
V Manufacturing, processing, servicing and repairs						
a. Household industry	999	3.6	332	10.0	1,331	4.3
b. Other than household industry	436	1.6	429	12.9	865	2.8
VI Construction	107	0.4	96	2.9	203	0.6
VII Trade and commerce	282	1.0	274	8.2	556	1.8
VIII Transport, storage and communication	39	0.1	1.7	3.2	146	0.5
IX Other services	959	3.4	1,270	38.1	2,229	7.1
Total workers	27,966	100.0	3,332	100.0	31,298	100.0

was 75%. Thus the incidence of household duties as the main activity was a little higher in the urban areas compared to the rural areas.

2.41 Table 30 indicates the distribution of women workers in nine industrial categories. It will be seen that only 2.8% of the women workers are engaged in manufacturing industries of the modern type, whereas 4.3% are engaged in household industry. The great majority of women are engaged in cultivation. Taking all ages together, male workers constitute 52.5% of the male population while female workers constitute only 11.8% of the total female population.

2.42 It may be noted that even in the biggest cities of India, namely, Cities with population of over one million, the female participation rates are very low. For example, in Greater Bombay, only 8.4 per cent of the female population is in the working force.

TABLE 31 :

Female working force participation rates in cities with population of over one million, 1971

<i>Million-plus-cities</i>	<i>No. of female workers</i>	<i>Female working force participation rates</i>
Hyderabad	70,771	8.2
Ahmedabad	35,819	5.0
Greater Bombay	208,676	8.4
Bangalore	63,197	8.2
Madras	78,429	6.7
Kanpur	20,435	3.7
Calcutta	137,024	4.7
Delhi	82,657	5.1

2.43 Table 32 shows the distribution of non-working females by type of activity. 51% reported household duties as their main activity. This table does not take into account the age groups. Table 33 gives the age-group composition and distribution by area of women reporting household duties as their main activity. It is clear from these tables that 99% of non-working women are in a state of dependence.

TABLE 32: *Non-working women classified by main activity, 1971.*
(figures in thousands)

<i>Main activity</i>	<i>No. of females</i>	<i>% of total</i>
Full time students	20,664	8.9
Household duties	118,404	51.0
Dependents and infants	91,722	39.5
Retired, rentiers and persons of independent means	477	0.2
Beggars, vagrants etc.	275	0.1
Inmates of penal, mental and charitable institutions	37	N
Others	526	0.2
Total	232,075	100.0

N.....Negligible

TABLE 33 : *Percentage of women reporting household duties as main activity, India, 1971*

<i>Age group</i>	<i>Rural</i>	<i>Urban</i>	<i>Total</i>
15-19	66.8	49.0	62.8
20-24	76.5	78.6	77.0
25-29	76.8	84.8	78.5
30-39	75.6	84.5	77.2
40-49	73.1	80.8	74.5
50-59	66.9	69.8	67.4
Total (15-59)	73.1	75.0	73.5

Migrant Women

2.44 The dependant status of women is further emphasised if we consider their proportion in internal migration. According to one demographer, "mobility in India is quite considerable, about one-third of the total population was enumerated outside their place of birth". A significant aspect of this mobility is the preponderance of women over men migrants, revealed by the last two censuses. The rural to rural migration stress, which accounted for more than 70% of the total migration, was dominated by women, who constituted nearly 80% of the total. Tables 34 and 35 indicate the relative position of men and women, according to type and distance of migration.

TABLE 34 :
Migration Streams, 1971

<i>Migration type</i>	<i>Total</i>	<i>Males</i>	<i>Females</i>	<i>Females per 1000 males</i>
Rural to rural	70.8	52.7	78.6	3447
Urban to rural	5.5	7.6	4.6	1398
Rural to urban	13.9	23.4	9.8	963
Urban to urban	9.8	16.3	7.0	990
Total	100.0	100.0	100.0	2310

TABLE 35 :
Distance and migration, 1971

<i>Migration type</i>	<i>Total</i>	<i>Males</i>	<i>Females</i>	<i>Females per 1000 males</i>
Short distance	67.4	54.9	72.8	3063
Medium distance	21.5	26.6	19.4	1682
Long distance	11.1	18.5	7.8	980
Total	100.0	100.0	100.0	2310

2.45 The fact that migrant women are more than double the number of men migrants has been explained as "marriage migration" and "associational migration" (accompanying their migrant husbands)⁷. The compulsion of marriage generally involves uprooting of the woman from her natal home, a compulsion seldom shared by the man. The figures, however, indicate that most of the female migration is confined within the rural areas, and to short and medium distances. Women outnumber men heavily in short and medium distance migration, but are considerably behind in long distance moves.

2.46 Apart from the dependence resulting from marriage we may draw certain other inferences from this data. A substantial number of women, even when they have to move with their husbands, need employment to support themselves and their families. The migration data indicates that for the majority of rural women, the urban environment is hostile from the point of view of economic opportunities. This is substantiated by the low proportion of migrant women workers in large cities.

TABLE 36 :
Per cent of female migrant workers to total female migrants in million-plus cities, 1961

<i>Cities</i>	<i>Per cent</i>
Greater Bombay	10.9
Calcutta	9.7
Delhi	5.7
Madras	8.5
Ahmedabad	7.0
Hyderabad	16.8
Bangalore	13.4
Kanpur	4.2

7. Bose, Ashish—Studies in India's Urbanization, 1901-1971, 1973, P. 142.
8. *Ibid*

2.47 A third factor that may have a bearing on female migration, particularly short distance ones, is the severe under employment of women agricultural labourers. While they are deeply rooted in village life, and do not welcome moving out of the familiar boundaries, the low level of employment available to women agricultural labourers⁹, drives them to seek short term, casual employment in nearby areas, during the non-agricultural seasons. Many seek work in construction—road building, stone breaking, major irrigation or flood control projects etc.

2.48 A fourth factor that calls for considerable investigation is the impact of broken marriages, widow-hood, desertion and abandonment of women on migration, as well as its obverse. We were informed in many places, that the number of such deserted women is increasing. The case of migrant labour was specially mentioned to us as conducive to such desertion. Generally it is the man who moves away, leaving the woman with the family to support. If the woman is still young, then the options open to her are—(a) to return to her natal family which is becoming increasingly difficult with the break down of the joint family and the rising costs of living; (b) to continue on her own, risking starvation and other social dangers, for herself and her children; or (c) to link up her life with some other man.

2.49 The second alternative is possible only if employment opportunities are available and the woman's employability is adequate to support the whole family. Since both these situations are absent in most cases, a number of such women have to take recourse to the other methods—and most of them involve migration.

2.50 The relationship between destitution and migration becomes visible in all times of scarcity, drought, floods or other crises. The effect of this on women has seldom been investigated, except during massive movements following political crises such as the refugees influx during the Bangladesh liberation struggle.

2.51 The main inference that has to be drawn from the preponderance of female over male migration is the greater degree of helplessness and insecurity that affect the status of women in this country. The data now available is only suggestive, and calls for much more detailed investigation than has been attempted so far. Our inferences in this regard are supported by the relatively high proportion of widowed, divorced or separated women, and low proportion of women workers and persons of independent means (Table 37).

2.52 We conclude by giving a summary picture of the male-female disparities measured as number of females per thousand males in regard to a number of demographic characteristics. The figures speak for themselves.

TABLE 37
Male-female disparity in regard to selected demographic characteristics, India, 1971

S.NO.	Particulars	Females per 1000 males
		930
1.	Total population	949
2.	Rural	858
	Urban	
3.	Religious community	930
	Hindus	922
	Muslims	986
	Christians	859
	Sikhs	962
	Buddhists	940
	Jains	474
4.	Literate and educated	1,342
	Illiterate	
5.	Age group	969
	0-4	935
	5-9	887
	10-14	883
	15-19	1,008
	20-24	1,027
	25-29	

(Continued)

9. Discussed in detail in Chapter V Sec. III (a)

(Continued)

	30-34	990
	35-39	916
	40-44	882
	45-49	839
	50-54	847
	55-59	867
	60-64	923
	55-69	916
	70 +	960
6.	Educational Level	
	Middle	371
	Matriculation or Higher Secondary	277
	Non-technical diploma & certificate technical	327
	Diploma or certificate	335
	Graduate and above	246
7.	Marital status	
	Total population	931
	Never married	762
	Married	1024
	Widowed	2772
	Divorced or separated	1630
	Unspecified status	328
8.	Workers	
	Total	210
	Cultivators	135
	Agricultural labourers	498
	Livestock, forestry, fishing, hunting and plantations, orchards, and allied activity	232
	Mining and quarrying	155
	Manufacturing, processing, servicing and repairs	
	(a) Household industry	265
	(b) Other than household industry	88
	Construction	101
	Trade and commerce	59
	Transport, storage and communication	34
	Other services	165
	Non-Workers	1726
9.	Non-workers according to main activity	
	Full-time students	480
	Household duties	6745
	Dependents and infants	1084
	Retired, rentiers and persons of independent means	356
	Beggars, vagrants etc.	587
	Inmates of penal, mental and charitable Institutions	254
	Others	190

CHAPTER III

THE SOCIO-CULTURAL SETTING OF WOMEN'S STATUS

3.01 Any attempt to assess the status of women in a society should ideally start from the social framework. Social structure, cultural norms, and value systems are important determinants of women's roles and their position in society. They influence social expectations regarding behaviour of the two sexes, both as individuals and in relation to each other. Social traditions are a major influence in shaping attitudes as well as behaviour patterns of human groups: emerging trends of society cannot be viewed in isolation from them.

3.02 The response of the structural forms to forces of change in other sectors of life is not easy to predict. Social structure can stimulate certain trends of change, but at the same time it can also prove to be an impediment in their path. Changes in the normative structure and in the organisational forms of society do not take place in unison; the difference in their pace often creates a hiatus. Thus we find that reforms in law and educational policy do not always make the desired impact because of the normative and structural unpreparedness of the society to accept their goals and means. In respect of the status that is accorded to women by law and by the Constitution we notice that there is a gap between the theoretical possibilities and their actual realisation. Religion, family and kinship, roles, and cultural norms delimiting the spheres of women's activities obstruct their full and equal participation in the life of the society and the achievement of their full potential. The new roles and responsibilities—and status—visualized for Indian woman will thus have to relate to the living realities of the social and cultural contexts of their present position.

3.03 In this chapter, therefore, our main endeavour will be

- (i) to analyse the institutional complexes and basic conceptions which would be helpful in explaining the present position of women belonging to various categories, groups, and strata operating in various spheres;
- (ii) to examine some of the myths about the natural capacities and disabilities of women and, in consequence, about the roles suited to them; and
- (iii) to discuss some features of our social order which reflect and effect the status of women. This would include dowry and other marriage expenses, prostitution, female suicide, [destitution in female population. These are essentially social phenomena which are directly related to the position of women in our society and hence constitute our important concerns. We propose to examine them in their social and cultural contexts and suggest lines of action wherever possible.

3.04 In many ways the necessity of changes in role relationships and in the treatment of women in various subsystems indicates a positive need for attitudinal changes. Hence, it is necessary to think of ways and means to bring about these changes in values and attitudes and perceptions of the people.

3.05 It is obvious that for an adequate description of the social and cultural scene and for an assessment of their social status, women of India cannot be treated as an homogeneous group. Broadly speaking, in our highly complex and extremely diversified society, women in different religious groups, caste levels, economic strata, and those belonging to tribal, rural and urban areas merit separate consideration. Differences in customs and norms and in conditions of their operation across groups and categories make it imperative for us to adopt this approach¹.

3.06 In our effort to grasp and portray the social and cultural reality and arrive at a cogent understanding of the present status of women in India, we take note of what is present in the people's consciousness as also of what is indicated by the logic of sociological understanding.

1. In this chapter we have made use of the terms upper or higher castes, middle level castes, and lower castes. This has been done to conform to Indian social reality in which there exists a ritual hierarchy of castes. Although this hierarchy is not a clear cut one, in terms of closeness of status and a broad commonality of customs and practices, it is possible to conceive of three levels of castes.

3.7 In the first section we examine the influence of religion in shaping and sustaining certain images of women. The second section deals with the forms of social organisation that exert the greatest pressure on women's roles and status, namely descent and kinship systems, marriage, and family organisation. The third section examines some of the constraints on women because of the distinction between men's sphere and women's sphere such as, those springing from division of work and seclusion and segregation of women, and the problems of adjustment that arise due to processes of social change. These are connected with the multiple role of women as home makers, wage earners, and participants in the wider society. The fourth section discusses certain special problems of women such as prostitution and suicide.

Images of women in Religious Traditions:

3.8 Indian society consists of communities professing diverse religious faiths. Because of the secular character of the polity and criminal and civil laws, the state does not make any distinction on the basis of religion, but because of the continuation of various systems of personal law; and special protection for minorities provided in the Constitution, religion does receive some recognition. In starting with a discussion on religious traditions it is not implied that religion is of paramount importance in understanding the relative statuses of men and women or that all categories of social facts which need to be understood in this connection are rooted in religion. That religion itself is born and nurtured in a certain type of social structure cannot be denied; nor can it be denied that religion imparts legitimacy and is functional to sustain certain kinds of social structure. At the same time when a religion is super-imposed on the sub-structures of certain sections of a society, it calls for and necessitates many compromises and adjustments. Religious systems and principles of social organisation cut across each other. For analytical purposes only, therefore, discussion of religion is separated from social structure and the various social institutions.

3.9 Religion provides ideological and moral bases for the accorded status and institutionalised roles of women in a society. The social restrictions on women, and also the people's notions about their proper roles in the domestic and extra-domestic spheres, are largely derived from the religious conceptions of a woman's basic characteristics, her assumed 'virtues' and 'vices', her proverbial strengths and weaknesses, and the stereotypes regarding her nature and capacities. Each religion has a treasure of myths and legends which through descriptions of events and activities emphasize certain values.

3.10 Religion has a definite role to play in the crises of life, i.e., the points of transition in an individual's life such as birth, initiation, marriage, and death. The social and religious aspects of these occasions are intermixed in all communities. It is an accepted fact that there are definite social mechanisms which help an individual to internalise the values, norms, and behaviour patterns rooted in religion. A continuity of conceptions regarding women's status and roles is assured in the process of socialisation in which women play a prominent role. A comparison of the fundamental notions regarding women in the major religious traditions reveals a direct conflict between them and the idea of the equality of sexes which is one of our guiding principles.

3.11 It is true that scriptures and sacred texts provide scope for diverse interpretations and value emphases at the hands of different authorities and at different periods of time. Religion has a dynamic character and is shaped and reshaped by historical processes and the interactions with popular religion. In India, Islam and Christianity had to compromise with local customs since their followers remained under the influence of pre-conversion social and religious traditions. Similarly, Hinduism has always absorbed both the "Great Tradition" and the "Little Traditions".

3.12 Through different periods of history orthodox Hinduism has produced strong reactions and has resulted in the establishment of new religions or sects, such as Buddhism, Jainism, Sikhism, Veerasaivism, and Vaishnavism, and the nineteenth century reform movements like

2. "In a civilisation there is a great tradition of the reflective few and there is a little tradition of the largely unreflective many. The great tradition is cultivated in schools or temples, the little tradition works itself out and keeps itself going in the lives of the unlettered in their village communities. The tradition of the philosopher, theologian and literary man is a tradition consciously cultivated and handed down; that of the little people is for the most part taken for granted and not submitted to much scrutiny or considered refinement and improvement. The two traditions are interdependent. Great tradition and the little tradition have long affected each other and continue to do so."

Refield, R. *Peasant Society and Culture* (1956)

TABLE 38: DISTRIBUTION OF POPULATION BY RELIGION 1971

Sl. No. 1	Total Population 2	Hindus		Muslims		Christians		Sikhs		Buddhists		Jains		Other Religions and Persuasions		Religions not stated	
		Population 3	%age 4	Population 5	%age 6	Population 7	%age 8	Population 9	%age 10	Population 11	%age 12	Population 13	%age 14	Population 15	%age 16	Population 17	%age 18
India	547,949,809	453,292,086	82.72	61,417,934	11.21	14,223,382	2.60	10,378,797	1.89	3,812,325	0.70	2,604,646	0.47	2,184,556	0.40	36,083	0.01
STATES																	
Andhra Pradesh	43,502,708	38,119,279	87.63	3,520,166	8.09	1,823,436	4.19	12,591	0.03	10,035	0.02	16,108	0.04	995	N	98	N
Assam	14,957,542	10,625,847	71.04	3,594,086	24.03	667,151	4.46	12,347	0.08	45,212	0.30	12,917	0.09	62	N	...	...
Bihar	56,353,369	47,031,801	83.46	7,594,173	13.48	658,717	1.17	61,520	0.11	4,806	0.01	25,185	0.04	976,997	1.73	170	N
Gujarat	26,697,475	23,835,471	89.28	2,249,055	8.42	109,341	0.41	18,223	0.07	5,469	0.02	451,578	1.69	18,781	0.07	9,547	0.04
Haryana	10,006,808	8,956,310	89.23	405,723	4.04	9,802	0.10	631,048	6.29	845	0.01	31,173	0.31	5	N	1,902	0.62
Himachal Pradesh	3,460,434	3,324,627	96.08	50,327	1.45	3,556	0.10	44,915	1.30	35,937	1.04	626	0.02	319	0.01	128	N
J & K	4,616,632	1,404,292	30.42	3,040,129	65.85	7,182	0.16	105,873	2.29	57,956	1.26	1,150	0.02	8	N	42	N
Kerala	21,347,375	12,683,277	59.41	4,162,718	19.50	4,494,089	21.05	1,284	0.01	605	N	3,336	0.02	562	N	1,504	0.01
Madhya Pradesh	41,654,119	39,024,162	93.68	1,815,685	4.36	286,072	0.69	98,973	0.24	81,823	0.20	345,211	0.83	836	N	1,357	N
Maharashtra	50,412,235	41,307,287	81.94	4,232,023	8.40	717,174	1.42	101,762	0.20	3,264,223	6.47	703,664	1.40	80,023	0.16	5,079	0.01
Manipur	1,072,753	632,597	58.97	70,969	6.61	279,243	26.02	1,028	0.10	495	0.05	1,408	0.13	83,167	7.75	3,846	0.36
Meghalaya	1,011,699	187,140	18.50	26,347	2.60	475,267	46.98	12,262	0.12	1,878	0.19	268	0.03	318,168	31.45	1,369	0.43
Mysore	29,299,014	25,332,388	86.46	3,113,298	10.63	613,026	2.09	6,830	0.02	14,139	0.05	218,862	0.75	380	N	91	N
Nagaland	516,449	59,031	11.43	2,966	0.58	344,798	66.76	687	0.13	179	0.04	627	0.12	108,159	20.94	2	N
Orissa	21,944,615	21,121,056	96.25	326,507	1.49	378,888	1.73	10,204	0.04	8462	0.04	6,521	0.03	91,859	0.42	1,118	N
Punjab	13,551,060	5,087,235	37.54	114,447	8.84	162,202	1.20	8,159,972	60.22	1,374	0.01	21,383	0.16	355	N	4,092	0.03
Rajasthan	25,765,806	23,093,895	89.63	1,778,275	6.90	30,202	0.12	341,182	1.33	3,642	0.01	513,548	1.99	4,339	0.02	723	N
Tamil Nadu	41,199,168	36,674,150	89.02	2,103,899	5.11	2,367,749	5.75	4,355	0.01	1,148	N	41,097	0.10	6,080	0.01	690	N
Tripura	1,556,342	1,393,689	89.55	103,962	6.68	15,713	1.01	318	0.02	42,285	2.72	375	0.02	...	...	...	...
Uttar Pradesh	88,341,144	73,997,597	83.76	13,676,533	15.48	131,810	0.15	369,672	0.42	139,639	0.05	124,728	0.14	423	N	742	N
West Bengal	44,312,011	34,611,864	78.11	9,064,338	20.46	251,752	0.57	35,084	0.08	121,504	0.27	32,203	0.07	194,126	0.44	1,140	N
UNION TERRITORIES																	
Andaman and Nicobar Islands	115,133	70,134	60.92	11,655	10.12	30,342	26.35	865	0.75	103	0.09	14	0.01	1,264	1.10	756	0.66
Arunachal Pradesh	467,511	102,832	21.99	842	0.18	3,684	0.79	1,255	0.27	61,400	13.13	39	0.01	296,674	63.46	785	0.17
Chandigarh	257,251	184,395	71.68	3,720	1.45	2,504	0.97	65,472	25.45	92	0.04	1,016	0.39	47	0.02	5	N
Dadra and Nagar Haveli	74,170	71,675	95.83	740	1.00	1,918	2.58	3	N	73	0.10	303	0.41	21	0.03	37	0.05
Delhi	4,065,698	3,407,835	83.82	263,019	6.47	43,720	1.08	291,123	7.16	8,720	0.21	50,513	1.24	527	0.01	241	0.01
Goa, Daman and Diu	857,771	550,482	64.18	32,250	3.76	272,509	31.71	885	0.10	260	0.03	556	0.06	269	0.03	560	0.07
Laccadive, Minicoy and Amindivi Islands	31,810	1,545	4.86	30,019	94.37	239	0.75	4	0.01	...	...	...	...	3	0.01	...	...
Pondicherry	471,707	400,793	84.97	29,143	6.18	41,296	8.76	51	0.01	21	N	237	0.05	107	0.02	59	0.01

* Only an abridged schedule for 297,853 persons was canvassed at the 1961 Census instead of all-India schedule, hence the religion break up for 1961 Census is not available.

N stands for negligible.

the Brahmo Samaj and Arya Samaj. These have to be viewed in the context of the direct or indirect effect that their preachings and activities have had on the status of women.

Hinduism:

3.13 Hinduism has a long history and many faces. During the centuries of its existence, the image of women has undergone many changes. It is said that women in the Vedic period enjoyed a high status. They had the right to study the Vedas and to offer sacrifices, and enjoyed considerable freedom in marriage. There was no bar on the remarriage of widows or women remaining unmarried³. This is not, however, true of Hindu women today. The women of the later ages pictured in the epics, the Puranas, and the Dharma-sastras have travelled a long way and can be seen in some ways even in the modern age. The image of women is not consistent and coherent, but her expected rights and duties are fairly clear. It is not our intention to trace and analyse the deterioration or ups and downs in the position of Hindu women through the various periods of history. What we are primarily concerned with is to identify the traditions which continue to affect the status of Hindu women in modern times.

3.14 Hindu society, with its well-defined strata, cannot be said to have nurtured to the same degree and at all levels, the values, ideals, and norms propounded by a religion having a continuity of thousands of years. There has been a continuous interaction between the Great Traditions of the literati and Little Traditions of the masses, and the percolation of the ideals, models, and values contained in the corpus of religious literature of Hinduism has been an unending process.⁴

This work has been carried out through the rendering of myths and legends in regional languages and by institutions like Hari Katha, Ramlila, Kirtan and Bhagavat.

3.15 In Hinduism a woman is described by a multitude of derogatory attributes. She is called fickle-minded, sensual, seducer of men; given to falsehood, trickery, folly, greed, impurity, and thoughtless action; root of all evil; inconsistent; and cruel. She must not study the Vedas or perform any sacrifices; knowledge of the Ghastras is forbidden to her. There is no provision for a woman to become a regular sanyasin. A woman is grouped with the Shudra, and along with them is called Papayoni, i. e. of sinful birth or one preordained to a low station in life. There are exhortations that a woman should be kept under control. "In childhood a woman must be subject to her father, in youth to her husband, and when her lord is dead to her sons. A woman must never be independent." This dictum of Manu along with Tulsidas's well-known stanza in which he groups women with drums, morons, Shudras and cattle as objects fit to be beaten have influenced the attitude of the Hindu masses towards women.

3.16 There is no overall appraisal of a woman's personality in the lore of Hinduism. She is viewed only in specific roles. With the conception of marriage as the true destiny of a woman and with her important obligation to bear a son, the roles of wife and mother emerge as the proper roles for a woman. The cult of the mother-goddess, whether accepted as an important trait of the pre-Aryan matrilineal cultures or borrowed from the tribals, seems to have had some influence on the status of women. A woman in mother's role has been elevated to a very high position in Hindu religious literature. She has been given high praise and a son has been asked to give respect to her. The Mahabharata says that mother excels in her greatness ten fathers and even the whole earth⁵. There is no guru like the mother. A Sanyasi is supposed to go beyond any kin-relationships, and if he happens to come across his parents, the biological father touches the feet of his Sanyasi son, but even this Sanyasi is expected to touch the feet of his mother.

3.17 The close and sustained association of the child with the woman's body is emphasized in a number of ways. By idealising the quality of sacrifice in a mother and by eulogising her motherhood, religion binds a woman to the home and to her role of creating and nurturing. A young virgin before the onset of menstruation and the mother of a son are the two images which evoke veneration. There are numerous laudatory references to the

3. Altekar, A. S. — *The Position of Women in Hindu Civilisation* 1938; Kane, P.V. *History of Dharma-sastra*, 1930, Vol. II, Part I.

4. Singer, M. — *When a Great Tradition Modernises*; 1972
Singh, Y. — *Modernisation of Indian Tradition*, 1973

5. Kane, P.V. — *History of Dharmasastra*—p. 580

female sex in these roles in the religious texts which are hardly in consonance with her limited rights laid down in the Dharmashastras. Under the impact of images created and sustained in Hinduism, women are regarded, on the one hand, as the embodiment of purity and spiritual power, on the other, they are viewed as being essentially weak and dependent creatures who are in need of constant guardianship and protection of man.

3.18 There is strong emphasis on a faithful and uncomplaining wife. The ideal woman is the devoted wife who is willing to suffer all kinds of adversities for the sake of loyalty to her husband. The dominant characteristics of well-known characters of Hindu mythology—Sita, Savitri, Ahalya, Draupadi, Gandhari, Mandodari, Damyanti to name a few—are loyalty to their husbands, steadfastness and chastity. This has been the essence of a woman's role as wife. Her husband is her lord and master. She has no separate existence. As Ardhangini she is her husband's partner in Dharma, Artha and Kama. As a part of Dharma she has to respect and look after her parents-in-law and other members of her conjugal family, look after the home and take care of guests and servants. As the statement of Draupadi runs, "the husband is a woman's God; it is through her husband alone that a woman, obtains progeny, enjoys comforts and luxury, attains fame in this world and heaven in the next. She serves her husband and performs Vratas for his welfare. She gives up cosmetics when her husband is away." Bhishma in Mahabharata states the following attributes as the best feminine virtues: fidelity, forgiveness, absence of guile, piety, and truthfulness. These virtues please Laxmi and bring rewards. Parvati says that there is no other God for a woman but her husband, and by serving him she attains heaven. She must be kind even to an unkind and irate husband and obey him. Thus not only marriage but the services rendered to one's husband are of paramount importance to a woman. So much so that it is said that for women there is no other religious rite but to serve their husbands. It is testified in the Puranas that a woman by serving her husband in thought, word and deed secures with much less trouble the same spiritual and heavenly worlds that her husband does with great effort and trouble. Expectation of immolation on the deceased husband's pyre (Sati) by the widow was the extreme limit of the notion that a woman's worth is nil without her husband.

3.19 For Moksha, women are grouped with Shudras and uneducated Brahmins. Devi Bhagavata Purana states that since women and Shudras, are unable to study the Vedas, the Puranas are compiled for their benefit. The Bhagavata Purana states that the Mahabharata was composed for women and Shudras, who are debarred from listening to the Vedas. After the emergence of Bhaktimarg, the path of devotion which did not need complicated knowledge and elaborate rituals, some women attained eminence and it provided an honourable way of partial asceticism, sometimes even complete asceticism for women.

3.20 In Hinduism, a strong patrilineal social structure along with features like the giving away of the girls in marriage, importance of the son for continuity of the line, authority and superiority of the male, significance of virginity, etc., have been sanctified with the help of Sanskaras. The significant ideas contained in the Vedic or Pauranic texts used for Sanskaras have their influence in varying degrees at various levels of Hindu population.

Vratas for Women and Their Significance :

3.21 Marriage⁶ and motherhood are the most honourable and religiously valuable achievements for a Hindu woman. The critical significance of marriage, of the continuity of the married state, and of motherhood for a woman is dramatically expressed and emphasized in the observance of special Vratas. They are observed for ensuring long life and welfare of the husband, for the realisation of the culturally coveted goal of getting married and of getting a suitable partner for life, and for securing special protection of sons. Their content in terms of the type of worship, the nature of fasting may differ from region to region; but a degree of self-denial, invocation of some deity or sacred object, commemoration of the ordeals of some mythological female figure constitute their core features. Renewal and distribution or exchange of objects which serve as diacritical marks of the married state such as vermilion, glass bangles, and black beads is also customarily done on such days.

3.22 Some Vratas are meant to be observed throughout life, some for a particular period; some by unmarried girls; some by married women. To mention only a few : a special worship

6. The story of Shubhru and Galavi in Mahabharata emphasises the supreme necessity of marriage to a woman. Shubhru grew old and weak in severe Tapasya (penance) and decided to give up her life. She was sure of attaining heaven, but was warned by Narada that being unmarried she could not go to Swarga. Shubhru then offered to bestow half the merit of her tapasya on whosoever would agree to marry her. Galavi married her for one night and ensured her entry into heaven.

of Goddess Laxmi on particular days; yearly commemoration of the steadfastness of Savitri who followed the God of Death and brought back her husband alive; annual worship of Parvati who performed difficult penance to win the heart of Siva; Varalaxmi puja prevalent in the South; Karwa Chauth observed in North India; Jayaparvati observed in Gujarat; Mangala Gaur or worship of Goddess of Tuesday in the month of Sawan in Maharashtra, a special Vrata in Bundelkhand called Suhag (observed for the sake of suhag or Saubhagya, i. e. the good fortune of having one's husband alive). Some of these have their sanction in the Great Sanskritic Tradition while others are rooted in regional beliefs.

3.23 Most of the Vratas observed by a mother for the welfare of her children are meant to be observed by those who have a son. Women having only daughters do not observe them. The differential value of son and daughter is apparent.

3.24 Internationalization of values of steadfastness, self-effacement, service and playing a secondary role is effected through these Vratas, which are observed even by many educated and sophisticated women. This may be either because of the strength of their beliefs; or because of their socialization which they cannot shake off, or because of the expectations of the family for whom this is an inalienable aspect of a wife's or a mother's role. Tremendous importance is attached to these observances for newly married woman.

3.25 The converse of this notion of marriage as women's destiny and the married state as the most desirable, is the idea of inauspiciousness and loss of the right to full participation in socio-religious life associated with widowhood. In contrast, a Hindu male has no fasts to observe for the wife's long life and welfare. The husband wears no distinctive marks signifying the married state and does not incur any inauspiciousness at the death of his wife. Religion, as a system of beliefs and rituals, undoubtedly accords an inferior and dependent status to Hindu woman. The common blessing for a woman 'May your husband live long' is self-explanatory. Although the strict code of conduct prescribed for widows is no longer operative in its most restrictive and oppressive aspects, there are certain disabilities associated with widowhood. She is debarred from active participation in auspicious occasions. Besides the items of decoration associated with the married state, she is expected also to discard colourful clothes, glass bangles, wearing of flowers, and attractive jewellery. Plain white colour is associated with widowhood, and by implication is forbidden traditionally for the Sumangali, i. e., one whose husband is alive. The widows of Bengal, who abstain from fish and the Kammas and the Reddy widows of Andhra Pradesh who give up meat are not yet extinct. Among the Brahmin and also among such non-Brahmin communities who do not have the custom of widow re-marriage, there are a number of ways for restricting the life of a widow so that she gets little pleasure out of life and her natural desires are suppressed. A distinct contrast between the status of a widow and a Sumangali is characteristic of India as a whole.

3.26 Even among such groups which traditionally allow widow remarriage, the disabilities associated with widowhood are present though not in the same degree of severity. In Hindu and tribal India a woman is entitled to marry with full rites only once in her life. Her subsequent unions, though approved by society, are solemnised by a very simple ceremony or may often be given recognition after a simple feast. Women with such secondary unions suffer from a few specific disabilities in regard to performance of particular roles in the rituals of marriage and worship of deities. This again indicates the significance of marriage for a woman and the vulnerability of her purity. No such disability characterises a man; he can marry a virgin any number of times with full rites and ceremonies. Even though the Widow Remarriage Act was passed in 1856 Hindu society still has not come to accept widow remarriage without reservation. For the majority, widowhood continues to be associated with the handicaps discussed earlier.

3.27 Grave impurity is associated with menstruation and child-birth. Severe restrictions over menstruating women in respect of association and participation in domestic, extra-domestic, and religious activities found in the texts have been strong among the Brahmin and upper caste groups, but have been operative among other sections especially in the sphere of religious ceremonials.

3.28 This notion of periodical impurity of women is one of the important bases for the conception of inferiority of the female sex as compared to the male. A woman is usually in charge of routine domestic worship; but nowhere is she found to be in charge of worship at the shrines and temples. Even Kali and other female deities are to be worshipped by a male

priest. It should be noted that this exclusion of women from officiating at community worship is not a direct result of their lack of knowledge of rituals which may be needed for worship, since in many kind of worship no such knowledge is required. Periodical impurity appears to be the basis for the exclusion of women from this role.

The Bhakti Movement :

3.29 The Bhakti movement which arose during the medieval period, denounced complicated rituals, and asserted that God could be worshipped not only through knowledge and rituals, but also by devotion. The devotional hymns composed in the languages spoken by the people brought this movement close to women, whose ignorance of Sanskrit had often deprived them from sharing the religious practices and experience of the men. This movement placed God within the reach of all, irrespective of caste or sex.

3.30 The history of the Bhakti movement reveals that it brought great solace to women and presented an alternative way of life to many individual women. Some even attained sainthood. Meerabai, Muktabai, Janabai, Vishnupriya are well known names in Bhakti literature whose compositions are popular to this day. For widows and neglected women devotion provided an austere way of life and a certain justification for living. Neither a Brahmin nor a husband is needed to reach God.

Veerasaivism⁷ :

3.31 Combining work and bhakti, Veerasaivism was, at the time of its inception, a democratising movement. The corpus of religious lore of Veerasaivism consists of 'vachanas' (sayings) of 200 to 300 saints. Out of these about 50 are women.

3.32 Marriage, which is not strictly a religious ceremony, is not considered as an obligatory ritual nor is it regarded as a hindrance in the path of devotion. Divorce and remarriage were allowed. Veerasaiva saints emphasise harmonious relations between husband and wife and frown upon the violation of marital fidelity by either of the two. A sin is not considered indispensable. Spiritual attainment and higher level of religious experience are possible for women also. They are known to have participated in philosophical discussions and missionary work. They are, however, not allowed to become Gurus.

Islam

3.33 In their relationship with the divine, men and women stand on a footing of equality in Islam. Woman, like man, is an individual who can pray to the Almighty, and can hope for redemption. A non-ascetic religion, Islam does not consider woman as an impediment in the path of religion, nor does it consider her as the root cause of man's downfall. The Quran is replete with injunctions aimed at bettering the lot of women who in the pre-Islamic societies had held a very inferior and servile position. However, in spite of the fact that Islam provided a much higher status to women than was commonly recognised in earlier societies, the social standards of the time were very different from those accepted today, and therefore the Muslim Shariat Law as it has developed over the centuries, places women in a disadvantageous or an inferior position in many respects. Many of these disadvantages arise from interpretations of the Koranic verse or the sayings of the Prophet in the light of the cultural norms prevailing in medieval times. Sometimes, traditions of the Prophet were even invented to validate later cultural norms which were being adopted under various types of influences. A few examples may be mentioned here.

3.34 In regard to witnesses, it was said that if a second man is not available, two women should be called so that if one errs, the other will remember. This was perhaps a safety device in view of women's extremely limited understanding of financial, commercial, and trade relationships, but it was also used for curtailing the women's right to a minimum in respect of offering evidence in criminal and civil cases.

3.35 In Islam a woman is as much a believer as a man, and (except in certain bodily conditions such as menstruation) has an equal right to undertake religious duties like praying and fasting. But a woman cannot be a priest, nor can she lead the prayers. She has no place in the formal religious organisation and legal affairs of the community. She cannot be appointed a Kazi.

3.36 Modesty, decorum and chastity were emphasised in the Quran, and the women were advised not to display their ornaments of beauty. This led to conflicting view-points about

7. Cult followed by the Lingayat Community in Karnataka.

the veiling and seclusion of women. It was thought proper to keep the women away from the gaze of outsiders. Among Indian Muslims, burqa and use of covered vehicles have been common devices for keeping women away from the gaze of outsiders. The matrilineal Muslim women of Lakshadweep and Kerala have however moved about without a burqa but with the head covered. It appears that the veil and seclusion of women have been more characteristic of the upper and the middle strata of society, more so in urban areas. The burqa is now becoming more of a lower middle class phenomenon and a status symbol amongst the working classes to indicate a rise in their social status. It is otherwise decreasing due to a number of factors such as education, economic pursuits, and the forces of modernisation generally. But it still continues to be a social reality and much religious feeling is associated with it.

3.37 Women's seclusion in Islam made them lose one of their important privilege-participation in communal prayers. It also lent extra support to a series of restrictions-women should not converse with other men, they should not talk loudly, letting their voices be heard by other men, they should not receive guests without the permission of the husband, and so on. Women can join in the prayer at the mosque for which there is a separate and secluded area reserved for them.

3.38 Marriage in Islam derives its legitimacy from the Shariat and is a contract. There is no ban on widow remarriage and divorce is allowed. Marriage is not religiously obligatory for a woman. But the contract of marriage gives very unequal rights to man and woman. Besides, the prevailing social customs are much more powerful in determining the social attitudes towards marriage, widow remarriage and divorce than the religious injunctions. As an example, religion provides for the free consent of both parties in the nikah, but in practice, it is a mere formality, so far as the girl is concerned. Similarly, widow remarriage and divorce are generally frowned upon, specially among the middle and the upper classes, even though they are permissible in Islam.

3.39 The rights of repudiation of the marriage contract is with the husband. Polygamy is permitted in Islam. A wife, therefore, has a distinctly inferior status. The institution of marriage-guardian (details of which differ according to different schools of law) places a woman in a subordinate position. Religion makes the husband the family head and expects the wife to obey and serve him.

3.40 Mehr (Dower) is meant to be a security for the wife against the possibility of divorce at the husband's free will. It is doubtful, however, as to how many women are in a position to assert their claims to mehr in the event of a divorce or widowhood, particularly in the communities among whom the marriage contract need not be in writing.

3.41 Women's rights to inheritance, provided in Islam, are significant especially in view of the fact that they were meant for a patrilineal social structure. Islam introduced shares for wife, daughter, mother, sister and grand-mother, the general rule being that the female was to inherit half of what the corresponding male would inherit. However, the women's right to hold or inherit property, is not often upheld in practice. This is largely due to their seclusion, absence of education, and the prevalence of customs and conventions which, in the Indian cultural setting, go against women's rights.

3.42 With regard to education, although Islam has made acquisition of knowledge an obligatory duty for every Muslim, in the case of women, it is largely restricted in practice, to enable them to offer prayers and to recite the Quran. Only the girls of the elite class have had access to some private instruction. It is to be noted that in India, towards the end of the last century, Maulana Abdul Hayy-Lakhnawi⁸ was requested for a juristic opinion based on the Shariat whether a Muslim girl should be allowed to learn writing. Though it was supported with the help of a tradition of the prophet, a diffused kind of feeling against women's education has continued and has received strong support from such customs and norms as seclusion of women, the desirability of their subordination to male authority, and the insistence on their performing assigned tasks in the domestic field.

3.43 The two practices that have been most detrimental to the status of women in Islam have been Talaq or unilateral divorce and seclusion of women. It is largely seclusion that has kept women backward in respect of education, health, prevented their participation in economic and social fields and has been a hurdle in the way of realising their property rights. It has

8. Fatewa Mawlana 'Abdul-Hayy' (Deoband), 550

made them heavily dependent on men for the business of living and hence also for achieving any progress.

Christianity :

3.44 In India Christianity is represented by communities of various denominations. In each of these communities the practice of the tenets of Christianity has been influenced, in varying degrees, by historical and contemporary socio-cultural factors. This has resulted in overshadowing, suppressing, or reviving and bringing into focus the essence of the teaching of Christianity regarding the status and role of women.

3.45 The myth of creation which says that Eve was created after Adam to act as his companion and help-mate accords a second place to woman in domestic and social life. She has to be subordinate first to her father and then to her husband. The mythic image of Eve as one who tempted Adam to eat the forbidden fruit has put a permanent stamp over women as tempters and seducers and has given the husband the right to control the wife. The Indian Christians believe that the wife belongs to the husband and it is because of this notion, with its roots in religion, that among some dowry-giving Christian a man is supposed to have a right over ornaments and property received by his wife from her parents.

3.46 Marriage in Christianity, however, lays emphasis on the establishment of a mutual relationship between husband and wife and on their duty towards each other. This is powerfully expressed in the following pronouncement which forms a part of the marriage rites :

“Man shall leave his father and mother and shall cleave to his wife; and they shall be one flesh.”

These words are interpreted to mean that the nucleus of family organisation is the mutual relationship of husband and wife; the ultimate authority and responsibility is not placed in the extended family or the patriarch. This outlook accords a better status to the wife than the others which regard marriage as an alliance between two families and transfer of the girl from one family to another. Our investigations show that even in some Indian Christian communities, like the various groups of syrian Christians of Kerala and Catholic Christians of Mangalore who practise joint family system to some extent, the daughter-in-law is not relegated to the background. She can move about with her husband and it is recognised that her primary relationship is with her husband. Her status is much better than the status of a daughter-in-law in patrilineal families of the upper caste Hindus. Though the father is the recognised head of the family, the mother has her own sphere of work and influence. Although the central authority in the home is vested in the male, mutual responsibility of husband and wife is recognised.

3.47 Christianity forbids poly-gamy. The establishment of monogamy stands out as the one enduring factor which has raised the status of women in Christianity. However, the concept of permanency of marriage which is considered a divine sacrament with no place for divorce has affected the women's status in both ways among the Catholics and some other groups. Along with the security of home and the certainty of not being separated from her children, she also has to be subjected to the husband's authority and is deprived of legal rights and independent existence. Divorce is recognized by the other groups, and is permitted according to the Indian Divorce Act of 1869.

3.48 The Bible lays great emphasis on the image of woman as a strong and steady influence for the good. Her notable qualities are : capacity to work with hands, kindness, wisdom, love and charity for the needy outside the home, and capacity to run her household in a manner that children get care and affection and the husband finds relaxation and peace.

3.49 In Christianity, both men and women are believed to have been created by God in his own image. Thus a woman is as much entitled to strive for her salvation as man. In fact every other role in her life is subordinated to this role. She is a spiritually sovereign human being and this right vested in her may not be violated in marriage. She has an individual moral independence and responsibility. In Christianity women have been entitled to study and learn religion and to attend and participate in all religious ceremonies. She has a right to become a nun. Thus, in one aspect of life, viz., in matters pertaining to the spirit and the practice of religion, Christianity accepts equality between men and women. Everybody is baptised in the name of Christ. However, women have never been given full ecclesiastic responsibility in the Church organization. Even in those Churches where women

hold subordinate offices, ordination of women was not permitted till recently. Today the situation varies all the way from Churches like those of the Syrian Christian who do not permit women to hold any office in the Church, to the Methodist Church which accepts the ordination of women to complete priesthood.

3.50 The acceptance of the notion, common to all Christians, that by helping each other one can attain salvation and the emphasis laid on the virtues of service, love and charity provide a women honourable careers other than marriage. Marriage is not a woman's sole destiny although socially it is most desirable. We do not find the practice of child marriage among Christian communities, and widowhood is not a curse. A woman is not confined to the home. Her participation in congregational prayers, absence of purdah, no rigid insistence on segregation of sexes, monogamy, emphasis on husband-wife relationship, value of Charity, and service to others—all these features of Christianity place women in a relatively better position than in other religions.

3.51 There is little wonder that in India in the later nineteenth and early twentieth century, Christian girls were way ahead of others in education and employment. The first educational and vocational institutions for women were established by Christian missionaries and though many of them were open to non-Christians they gave special concessions to Christian girls. The Christian girls, not subjected to many injunctions and taboos, were in a better position to derive benefit from these institutions. As there was no taboo against their working outside the home, some of them also took up jobs. It is generally known that in the late nineteenth and early twentieth century women teachers, inspectresses of schools, doctors, and nurses in India were largely from among the Christians.

3.52 Some of the teachings of Christianity are found to be overshadowed or misused by the customs and values of particular converted groups to the detriment of women's status. We will discuss these issues at appropriate places. However, the basic notion of inferiority of women not softened by any distinct elevation of her sex-linked roles has left Christian women to fight against the slavery of the home and against their large scale confinement to less prestigious jobs in the men's world.

Jainism

3.053 Except in Kerala and parts of Karnataka, the Jains are patrilineal and are governed by the Hindu personal law. Kinship ties and joint family living are strong. Because of recruitment from diverse culture areas the Jains internally differ in their customs and practices, which often over-shadow or even override religion.

3.54 As a way of life Jainism lays great stress on self-denial, restraint of passion, and a life of renunciation, for both men and women. As a socio religious organisation the Sangh comprises both monks and nuns as well as both male and female lay followers. A woman has a legitimate position in the congregational life. She can occupy a position of leadership in which she deals with matters of practical concern and not with instruction. But the female ascetic appears to have suffered from certain handicaps in matters of seniority between monks and nuns, and in freedom of advanced study of certain scriptures. By and large religious learning and renunciation are allowed to women who have a full right to aspire for Moksha. The sects differ in their view of whether a woman can attain liberation as a woman or her soul has to be reborn as a man (as women have certain physical disabilities and mental weaknesses) in order to attain liberation. However, since according to Jainism no one is likely to attain liberation in the present age, this controversy does not have much practical significance.

3.55 In the religious context it cannot be ignored that in ascetic manuals and sermons there is severe condemnation of woman who is looked upon as a tempter and seducer and is called tricky, deceptive, hypocritical, fickle, untrustworthy, and treacherous. This has been done with the specific purpose of warning a monk to keep himself away from women so that he is not swayed from a strict celibacy in word, thought and deed. No such derogatory characterization of man is needed to keep women on the path of self-restraint in Jainism.

3.56 Jainism-prescribes suitable patterns of moral conduct for ascetic as well as domestic life. Although actual customs and practices of the Jains often depend on their environmental setting and thus manifest differences between north and south, east and west, certain basic features of the faith have definite influence on the status of women. As there is no religious obligation of Pinda-dana to ancestors in Jainism there does not appear to be any premium

on the birth of son. In the patrilineal setting, however, boys have been claiming superiority over girls in respect of the right to inheritance and succession. For a daughter it has been customary to get Kanya-shulka or some kind of compensation. Nor is marriage obligatory for a girl in the same sense as it is in Hinduism, for the religious path is open for her. Marriage is not a religious institution and so the customs differ from area to area, but basically a wedding is a simple ceremony. Jain women also use diacritical marks to denote their marital status. Marriages are arranged by the parents and they tend to do so in restricted circles which are something like sub-castes.

3.57 Polygamy is not forbidden. There is no sanction for widow remarriage, for a life of self-restraint is greatly valued. Divorce and widow remarriage are, however, found customarily practised among certain sections. But a widowed woman does not easily lose her position. She can lead a pious life of Shravika within the family setting. A widow is obliged to lead a simple life, but with the adoption of a pious way of life she could become an object of reverence. She could also become a nun. Thus widowhood is not exactly a curse in Jainism. But differential treatment of the sexes in this respect is clear.

3.58 In the context of the family, chastity in women is greatly valued and several stories in Jain scriptures are woven round this theme. Motherhood is respected but a childless woman does not find her future absolutely dark.

3.59 In Central and North India the Jains follow a certain degree of segregation of sexes. Kinship ties are strong and women have constraints comparable to those of their high caste neighbours. The brunt of maintenance of regulations related to purity and to food falls on women. In the changing milieu, the religious prescriptions are mainly observed by women.

Buddhism :

3.60 Buddhism recognized broad parity between man and woman in matters of religion; both the sexes being charged alike with the duty of unholding Dharma. Women are allowed to become nuns. Nirvana is possible for both men and women. Thus, Buddhism as a liberal reaction against orthodox Brahmanism elevated the status of women. But after a modicum of equality the scales have been tipped in favour of the monk. This is clear from such evidence as : a statement that the merit accruing from a donation to the Sangh of monks is more than that accruing from a donation to the Sangh of nuns, the rule that cannot preach to the order of monks, and the rule that a Bhikkuni, even though older, should bow down even before a younger Bhikku.

3.61 Buddhism does not consider woman as evil or as one solely responsible for sensuality in the world. Yet she can be an obstruction in the path of deliverance. Woman is physically weak and dependent, but mentally as good as man.

3.62 A girl can remain unmarried by becoming a Bhikkuni. From widowhood also there is a respite in renunciation. However, the ideal propounded for women in society is not materially different from the one upheld by the orthodox Hindu view. She has to serve the man. Mother as a self-sacrificing and benevolent figure is very much present in Buddhist thought. Despite her intellectual parity, woman is definitely considered as inferior to man in the monastery as well as in society.

3.63 In Ladakh, Lahaul and Spitti where Buddhism prevails, at least in theory men and women are considered mentally at par with one another. But in practice the position is quite different. Of the two types of nuns in the Buddhist order the Bhikkhuni (with 300 rules of conduct and treated more or less equal to male counterparts) and the samenara (with only ten rules to obey)-today, we find only the Samenara who generally live with their families, and are treated like honoured servants. They are given higher seats, but their job is to perform household chores. In this area there are very few nunneries. Even senior nuns are considered inferior to monks. Because of the prevailing practice of polyandry in these regions, girls are often forced to become nuns. Since the communities in these regions practise the customs of bride price as well as divorce and remarriage the Buddhists also follow them.

3.64 The birth of a boy is not specially felicitated. This is presumably so because the girl is a productive worker and brings gifts at marriage. Because a son is not needed by the parents for the last rites and Pindadana, in the same way as the Hindus, girls are not lower than the boys.

3.65 The position of women in these areas appears to be better than that of the women in the plains, but it is difficult to ascribe this to Buddhism as such. The main reason perhaps lies in their participation in the economy. Buddhism leaves most of the areas of worldly life to be managed by the people according to their customs and traditions.

3.66 In the newly emerging areas of activity like education, medical service, and political participation men are coming forward more than women. The preaching and organization of religion is in the hands of monks.

Sikhism

3.67 Sikhism condemns formal ritual, idolatry, and superstition, and emphasizes simple devotion to God. In the pursuit of religion both men and women have a place as individuals. "That tongue alone is blessed, that utters words of God's devotion," Sikhism emphasizes the householder's ideal and demands respect for woman as men's helpmate and sharer in his domestic life. It does not look upon woman as an agent of sin and evil; nor does it regard her as an object of pleasure. Guru Nanak asks women to have a pure way of life and not indulge in extravagances of wealth. Association of impurity with the cosmic natural processes like birth is condemned. Man is exhorted not to condemn woman who is his companion and of whom are born great men and all men.

3.68 For the purposes of devotion there is no difference between men and women. In social life, however, Sikhism did not concede equality for women. Her kinship and domestic roles are emphasized. She has important roles to play as wife, mother, sister and daughter. The qualities that women are asked to develop are love, obedience, contentment, and sweet temper. A woman should be in harmony of temper with her husband. Mother's role and wife's roles are brought into relief in the tales of the wives of the Gurus.

3.69 Sikhism was adopted by people belonging to different Hindu Castes mainly in the Punjab. In this religion, there are several clearly defined rules regarding personal habits, but not many well laid out injunctions covering institutions like marriage and family that could have imperatively changed people's staunch beliefs and actions. We, therefore, find that social customs defining woman's roles and constraints over them are not common to all the Sikhs. In this respect there are important differences from territory to territory and from group to group. The differences in the rural and urban settings are also significant. The Jat Sikhs continue to follow their original Jat customs. In matters such as divorce, separation, remarriage, widow's position, women's rights of ownership and inheritance and seclusion of women, people generally tend to follow the customs and practices of their original caste or regional culture,

3.70 Importance of kinship and of family ties, with the idea of the transfer of the girl in marriage from one family to another, have a prominent part shaping relationships in the family. The Sikhs are governed by the Hindu personal law which exists side by side with the customary law of particular groups.

Zoroastrianism

3.71 In India there are less than 100000 Parsees, who follow Zoroastrianism-one of the oldest religions of the world. Migrating to India over 1300 years ago, the Parsees adopted Gujarati as their language, and while retaining most of the customs and elements of their religion, they could not escape some influence of the indigenous populations. After the coming of the British, they were among the first to take to the Western style of life and to English education.

3.72 Zoroastrian women enjoy a position of honour in the family and in the society. The evils of polygamy and child marriage, which had crept in under Hindu and Muslim influence, were fought and removed by the Parsee Panchayat in the 19th century. The Parsee Marriage and Divorce Act and the Parsee Succession Act were passed with the strong support of the leaders of the Parsee community.

3.73 In Zoroastrianism women are entitled to both religious and secular education. Boys as well as girls go through the investiture rites. Marriage is solemnised and sanctified by a religious ceremony, but it is a contract. It is always monogamous. Consent of both the boy and the girl is essential for marriage. Religious tradition does not approve of child marriage, and today, as in ancient days, the minimum age of marriage for girls is fifteen. If circumstances demand, a girl can marry against the wishes of the parents. Dissolution of

marriage, for proper reasons, is allowed. Practice of remarriage has always been there. A Zoroastrian woman is an equal partner in marriage and family, and enjoys respect as mother and wife. Parents of both the bride and the bridegroom contribute to the setting up of a new household. A woman has inheritance rights both in her capacity as a daughter and as a wife. A widow does not have to forego the inheritance of husband's property if she remarried.

3.74 Zoroastrianism traditionally imposed menstrual taboos demanding segregation and non-participation in religious activities. Though no longer stringently practised these restrictions are operative in the context of rituals. Women can preach but they cannot become priests. Only since 1935, the Parsee Panchayat has started admitting women into it as members.

3.75 There is one disability which women suffer compared to men, but it is more a function of patriliney, combined with a non-proselytizing religion. The child of a Parsee father and a non-Parsee mother, whether in wedlock or out of it, can be initiated into Zoroastrian faith by the Naojote ceremony. But neither by religion nor by law can a child of a Parsee mother and a non-Parsee father be received as a Zoroastrian. The dwindling numbers of the community are to some extent due to this discrimination as marriages between Parsee women and non-Parsee men are on the increase. The community finds it unable to stop such marriages, for girls have great freedom of movement, but it certainly has tremendous reservations and resentment so far as their marrying outside the community is concerned. Conversely, a Parsee boy's marriage with a non-Parsee girl is accepted with greater grace, although the non-Parsee wife is never accepted in Zoroastrianism, which is not a proselytizing religion. Parsee girls marrying a non-Parsee by the Special Marriage Act are claiming a right to remain a Parsee and visit the fire-temple but the Parsee Panchayat has not yet decided the issue. It may, however, be mentioned that these girls do not lose their inheritance rights in interstate succession.

Tribal Religions

3.76 The percentage of tribal population to the total population is 6.87% according to the 1961 Census which records 2,98,79,29 people as tribals. It is obvious from the table of distribution of population by religion that all tribals are not included in the statewide figures stated in the column "other religions and persuasions". This will be clear if we have a look at the state-wise distribution of population. Conversion to Christianity accounts for a large section of the tribal population. For instance in Manipur 26.03% population is Christian and in Assam 46.28% population is Christian. The Christian population of Bihar and Orissa (658717 and 378,888 respectively) also comprises tribals on a large scale.

3.77 Another factor is the presence of Buddhism in some tribal population such as the tribals of Himachal Pradesh. Further, the people of Lakshadweep who are Muslims have been declared as Scheduled Tribes and the Jaunsari people now included in Scheduled Tribes are Hindus. Moreover, in States like Madhya Pradesh, Bihar, and Orissa many tribal groups who have been influenced by the neighbouring Hindu population return themselves as Hindu. There is a substantial proportion of tribal population in these States, and if all of them had declared themselves as belonging to tribal religion, figures in the column of 'other religions' would have been different.

3.78. It is, however, important to note that those tribals who return themselves as Hindu or Christian do not completely discard their tribal customs. Majority of them hold their beliefs, worship the tribal deities and conduct ritual etc., according to tradition.

3.79 Tribal religions in India do not constitute a homogeneous system. What is attempted here, therefore, is to identify some significant elements of these faiths and examine the place of woman in respect of them.

3.80 The social structures and cultural systems of the tribes are reflected in their system of beliefs and ritual practices. Tribal religion is matter-of-fact and materialistic. The purpose of propitiation or homage and of manipulation of supernatural powers is mostly to avert misery and destruction in inter-personal relationships and maintenance of structural principles.

3.81 Religious activities can be classified into (a) of the family, (b) of the group, and (c) of the village. Women have a role only in the first. They may be responsible for keeping the domestic fire kindled and for routine looking after of the place assigned for gods and

ancestors in the house; but in the periodical or special worship of lineage ancestors or deities and clan deities, women have no place; at the most they play the role of helpers in making preparation for rituals. Matrilineal communities like the Khasi are an exception; among them the youngest daughter has an important role to play in relation to lineage ancestors and deities. The Garo also have priestesses. However, it needs to be mentioned that even in many of the matrilineal communities priestly functions and handling of matters pertaining to transgression of taboos are in the hands of men. In most tribal communities priesthood is a male prerogative. Knowledge of ritual formulae rests with men. In a few tribes like the Saora of Orissa, and the Irula and the Paniyan of Kerala, women function as shaman (diviner and curer), but female priesthood is almost absent.

3.82 Horror of menstrual blood is universal in tribal India and leads (a) to exclusion of women from holding any positions of ritual importance and (b) to their association with malefic supernatural powers. Witchcraft, which is considered dangerous, is largely associated with women, in both tribal and rural India. It is believed to be some kind of an unavoidable malefic power which gets transmitted from another person, commonly one's mother, in some vulnerable circumstances. During the periods of menstrual flow, pregnancy and post-natal impurity, women are held to be specially vulnerable.

3.83 Rites of passage are definitely male weighted. So also are the sacrifices and various devices for increasing the fertility of the soil and cattle, and rites to please the elements of nature.

3.84 In some tribal communities women suffer from severe disabilities in the religious sphere. The Toda debar their women from having anything to do with the buffaloes and their products. Their rituals are centred round the buffalo and women are completely excluded. Among the Kota also women are strictly forbidden to associate themselves in any way with the funeral and other rituals. Santhal women are also not allowed to participate in communal worship nor can they eat sacrificial meals. In fact, a Santhal woman is not considered a full-fledged member of the society.

3.85 In the maintenance of community discipline and public morality which is the function of the Panchayats or Tribal Councils, women have no role. Even the Regional Councils set up after independence in some tribal areas, have resisted the efforts of a few women to obtain any position on these bodies.

3.86 While their position in religion and rituals is definitely lower than man, women's participation and contribution in economic activity results in considerable freedom in norms of social behaviour. The average age of marriage is higher among tribal women than among other communities. In choice of partners, rules of divorce and remarriage most tribal women enjoy greater freedom, though the influence of Sanskritisation has reduced this in some communities.

Social and Religious Reform Movements of the 19th and 20th Centuries

3.87 The impact of British rule, English education and Christianity propagated by missionaries resulted in a number of movements for social change and religious reform in the 19th century.

"The first impact of Western teaching on those who received it was to incline them strongly in favour of the Western way of looking at things and under this influence they bent their energies, in the first instance, to the re-examination of the whole of their ancient civilisation or their social usages and institutions, their religious beliefs, their literature, their science, their art in fact their conception and realisation of life.⁹

3.88 The broad aims of these movements in the social sphere were specially emphasizing caste reform or caste abolition, and improvement in the rights and status of women and generally against social and legal inequalities. The latter, however, involved an attack on certain social institutions and practices like child marriage, position and treatment of widows, seclusion and the denial of women's rights to property and education, the roots of which lay in the religious traditions of different communities.

9. Gopal Krishna Gokhale in Rao R. and Singh-*Changing India* (Speeches and Writings of Indian Leaders) 1934, P. 122

3.89 Leaders of the reform movements therefore realised that it was difficult to separate social reforms from religious reforms. Though some of the earlier leaders like Ram Mohan Roy had believed that it was possible to reform all religions together, bringing out the basic unity that underlay all religious faiths, such attempts met with resistance, not only from the orthodox sections of different religious communities, but also from the policy of the ruling power which believed that the security of British supremacy in India depended on keeping the different religious communities separate from each other. This policy was particularly aided by the existence of different systems of Personal law, closely related to the religious and customary traditions of the communities and castes which the British helped to perpetuate.

3.90 Historians of the Indian social system have always emphasised a characteristic feature of this stratified society which, while retaining its basic framework of inequalities and divisions, had by and large displayed considerable capacity for adapting itself to processes of social change¹⁰. Much of this process of adjustment and adaption took place because of regional diversity in cultural norms and the realisation by religious and community leaders that without such adjustment it would not be possible for their particular traditions to survive in the Indian context. We have already pointed out how different religious faiths like Islam and Christianity compromised with existing socio-cultural traditions in different regions and communities. The British system of recording and providing official recognition to principles and practices of social organisation at a period of time however introduced an element of resistance to this process of natural adjustment and change¹¹.

3.91 It was therefore inevitable that the movement of social reform should develop within the folds of each religion rather than as a unified movement for the transformation of the society as a whole. The most important of these movements that developed within the Hindu society were the Brahmo Samaj, Prarthna Samaj and the Arya Samaj.

3.92 *The Brahmo Samaj*: was founded by Ram Mohan Roy in 1825. Concerned with religious issues, it opposed the dogmatic structure of religious tradition. It also attempted to remove certain restrictions and prejudices against women rooted in religion. These included the abolition of child marriage, seclusion of women, limited inheritance rights, polygamy, etc. The Samaj emphasised the need for educating women as the best instrument to improve their position.

3.93 Under the leadership of Keshab Chandra Sen, the Brahmo Samaj became more concerned with improving the position of women. Provision was made for educating women at home and government assistance was enlisted for this purpose. A new magazine was started to publish articles of special interest to women and to provide an opening for their literary aspirations. In 1862 an inter-caste marriage was solemnised under the auspices of the Samaj. Opposition of orthodox Hindus to the legality of such marriage resulted in the passing of the Native Marriage Act (popularly known as the Civil Marriage Act) in 1872 which permitted inter-caste marriage and divorce, prohibited polygamy and prescribed 14 and 18 as the minimum age of marriage for a girl and boy respectively.

“The Act facilitated the sweeping social reform advocated by Keshab Chandra Sen, particularly the abolition of caste distinction.”¹²

3.94 In 1879 the more radical section of members founded a separate wing - the Sadharan Brahmo Samaj. They started a women's association in which key positions were held by women. They propagated education and social inter-action between men and women and careers for women outside the home.

3.95 It is generally believed that the influence of the Brahmo Samaj was confined mainly to Bengal and north India, but there is evidence to show its extension to South India also. At the end of the 19th coastal districts of Andhra Pradesh were exposed to the influence of the

10. Hutton, J. H. - *Caste in India*; G. S. Churye *Caste, Class and Occupation*; Srinivas, M.N. *Social Change in Modern India*

11. Two typical examples are (a) judicial or statutory recognition of an existing custom which prevented the normal pattern of change over a period of years; and (b) enumeration of people by caste adopted by the Census during the British regime which acted as a brake the normal mobility of castes or sub-castes within the caste hierarchy-See Churye for observations by various Superintendents of census of 1911 and 1921 in this respect.

12. Majumdar, R. C., *British Paramountcy, and Indian Renaissance*, p. 104

Brahmo Samaj. But it was primarily a reform rather than a religious movement. As these districts had seen a great deal of missionary activity, and the conversion of caste Hindus to Christianity, Brahmoism expectedly gained the greatest ground here. This was because the Brahmo Samaj was not a proselytizing movement. Rather, it sought to integrate the untouchables within the Hindu fold. Brahmo leaders were active in providing education and in inculcating a social consciousness. Venkatratnam Naidu adopted girls from the Scheduled Castes and arranged their marriages to high caste boys. Other leaders included K.V. Pantulu, Unnavalaksh—minarayana, Ramjee Rao and Chilakamarthi Lakshmi naresimhan.¹³

3.96 *The Prarthna Samaj* : Founded in 1867 the Prarthna Samaj developed ideas similar to those of the Brahmo Samaj and remained principally a movement of western India. It propounded belief in one God, supported bhakti and opposed idolatry. While as a body it did not take any formal stand on social reform except sponsoring education for women, some of its leading members were active in the women's cause. Talang, for example, was a founder member of the Bombay Widow Reforms Association which arranged the first widow remarriage in 1869. Ranade and Bhandarkar were among the participants when Shankaracharya was challenged to a public debate to decide whether or not the Shastras sanctioned widow remarriage. Ranade acted as the spokesman of the educated people and moderate reformers strengthened the hands of the government in passing the Age of Consent Bill in 1891. Founding of the National Social Conference in 1887, with the specific purpose of bringing together annually the representatives of various associations, was a great achievement of Ranade in the women's cause. Two leading Prarthna Samajists, Bhandarkar and Chandavarkar, agreed to be Vice-Chancellors of the Women's University started by Karve in 1916.

3.97 Both these movements made a forceful effort to prove that Hindu religious tradition was certainly not the source of legitimacy for the pitiable condition of women. Under the influence of liberal thought of the West, they recognised the individuality of women. But essentially they aimed at making women better wives and mothers and were keen to bridge the gap between the levels of understanding of the males (both husband and son), who had the benefit of modern education, and the women of the family.

3.98 *The Arya Samaj* : While the Brahmo Samaj and Prarthana Samaj were the products of the reaction of a section of urban, western educated elite, influenced by Western liberalism, the Arya Samaj was a dissident religious movement which rejected Hindu medieval religion with its idol worship and the post-vedic caste society. This was founded in 1875 by Dayanand Saraswati. Essentially revivalist in character, the Samaj also stood for the reform of the caste system and tried to raise the status of women in several ways. It advocated revival of the vedic society in its pristine form. Its influence spread mainly in the Punjab and United Provinces among the middle and higher castes. Though mainly an urban movement, its influence extended to semi-urban and rural areas also.

3.99 Dayanand Saraswati emphasised compulsory education of both men and women and spoke of purdah as an evil which came in the way of courage, learning and broadmindedness. He propagated prohibition of child marriage by law and approved the remarriage of child widows. He was, however, opposed to divorce or to remarriage of widows in general. While he prescribed similar education and religious initiation for boys and girls, he emphasised the need to maintain sex distinction in schools and among teachers, prescribing a minimum distance of 3 miles between boys' and girls' schools. This emphasis on education was continued by the Samaj even after his death, and a number of institutions were established. The Arya Kanya Pathshalas, which gradually developed into colleges have contributed greatly to the cause of women's education. In the later years, leaders of the Samaj broke away from his disapproval of widow remarriage and contributed to improving the position of widows. The Samaj did not make any distinction in marriage rites of virgins and widows.

3.100 Its repudiation of the caste system, however, did not extend to demanding its abolition, nor did the Samaj mount a campaign against untouchability. The followers of the Arya Samaj tended to follow the pattern of arranged marriages for their children as well as the rules of endogamy. While there is no objection to inter-caste marriage, most families tend to establish marital connections within the caste group, sometimes with

13. Ramaswamy, Uma—'Self Identity among Scheduled Castes: A Study of Andhra Pradesh', *Economic and Political Weekly*, Vol. IX, No. 47, p. 939

sanatani families of the same caste. In consequence, the reformist character of the movement has tended to recede. On the other hand, the emphasis on the house-making roles of women, whose primary duty is to love and serve their husbands, and children in the traditional way has limited its contribution to the cause of women's emancipation.

3.101 *The Muslim Reform Movement*: Like the parallel movements among the Hindus there were movements of reform within the Islamic community. Regarding the position of the women, however, reforms were delayed, partly because modern education entered the Muslim community much later, and partly because the seclusion of women was defended by leaders of the community more persistently. "The practice of polygamy, however, registered a marked decline due to the prevalence of modern ideas and decline in material prosperity."¹⁴ A progressive movement to improve women's educational opportunities began to develop from the last years of the 19th century, under the leadership of a few individuals like the Begum of Bhopal, Sheikh Abdullah in Aligarh, Justice Karamat Hussain in Lucknow and others; a large number of books and journals appeared which carried enlightenment to the newly educated Muslim women.¹⁵ Many reformers tried to revive widow remarriage, which had become strictly taboo among the respectable classes, due perhaps to the prevailing social ideas. Criticism also started against the custom of denying to the daughters a share in their fathers' property as a violation of the tenets of Islam. Failure to eliminate seclusion, however, defeated many of the aims of these reformers and the status of Muslim women still remained far from one of equality in spite of these reform movements. Among the urban educated middle classes, however, these ideas contributed to some change in the position and treatment of women within the family.

3.102 Similar movements to improve the position of women emerged among other communities and different regions. Behramji Malabar was the main spirit behind the age of Consent Act of 1892. The depressed condition of women in all communities made it difficult for them to fight for their own rights. A few outstanding exceptions faced great opposition from their communities. Pandita Ramabai, having incurred the wrath of the orthodox by marrying out of caste, ultimately turned to Christianity to aid her campaign to improve the conditions of women. Dhan Korbai suffered great hardship for marrying after widowhood. Vidyagouni Neelakant faced bitter opposition to obtain education.

3.103 The changes envisaged by these reformers were only partial. They aimed to change the position of women within the family and the domestic framework and did not foresee any radical change in the social structure. Education, raising the age of marriage, widow remarriage, the abolition of seclusion and rights to property were essentially attempts to improve the woman's position within the family framework, and to ensure for her a degree of dignity and independence. None of these movements aimed to make the woman an equal partner of man in the societal roles outside the family. The movements were also limited in their appeals; while the Brahmo Samaj and Prarthana Samaj appealed only to a limited section of Western educated urban Indians, the Arya Samaj, Ramakrishna Mission and other revivalist movements appealed to a wider group, including the urban lower middle class. The general impact of all these movements has been most pronounced on the urban middle class. Some of the ideas projected by them, namely disapproval of child marriage and ill-treatment of widows, education and better treatment of women within the family, ensuring to them a position of greater dignity, have become a part of the general cultural heritage of this section of Indian society.

3.104 Being elitist in character and limited in approach, they have never tried a proper investigation of the problems that weighed on women outside the middle class. Education, though valuable - could not reach the masses. The universal oppression on all women however lay in their subordinate and subjugated position in society, which sanctioned such treatment. The removal of this called for a restructuring of the social organisation which the reform movements, by and large, did not aim for. The two social ideas which really threatened the basic structure of Indian society during this period were women's emancipation, and mass education. Since the reform movements were not prepared to identify themselves with such extreme, radical ideas, their efforts to emancipate women, could be only limited.

3.105 It has to be remembered that the most towering personalities in the movement for improving the lot of women came from individuals who were indifferent to the religious

14. Majumdar, R. C. — Op. cit p.

15. Novels of Moulvi Nazir Ahmad and two journals — 'Tahzib-i-Niswan', and 'Isnat'.

aspects of the reform movements. Iswar Chandra Vidyasagar and Jotiba Phule wanted to free Indian society not only from religious superstitions, but from the social inequalities that oppressed all the weaker sections, including women. It was however left to Mahatma Gandhi and, the Freedom Movement to place the movement for women's emancipation in its proper perspective, as a part of the larger movement for social transformation.

Descent, Marriage And Family

Descent systems :

3.106 Modes of descent, types of family organisation, and nature of the institution of marriage provide the major contours of the socio-cultural setting in which women are born, brought up, and live their lives. These features of social organisation are related to the economy in such a way that while their roots often appear to lie in the economic system, even large-scale changes in the latter are not able to carry along with them parallel changes in these areas. The lag between the two is a matter of serious concern. These institutions in the Indian society have implications for the status of women.

3.107 **Matrilineal Descent :** India has only a limited number of matrilineal communities which are concentrated in the south-western and the north-eastern regions of the country. Kerala has been the stronghold of matrilineal culture. The Nayars, the Tiyyars of North Kerala, and several temple servant castes, occupational castes, and some forest tribes have followed this mode of descent which governs group placement, property rights and successions of authority. Matriliney is found in parts of Karnataka and Tamil Nadu also. The legal systems of these communities have undergone drastic changes since the close of the last century. Muslims following matriliney are moplabs of northern parts of Kerala and the inhabitants of the Union Territory of Lakshadweep. The latter are classified as Scheduled Tribes. They have all along followed their customary laws for inheritance of matrilineal property and present an example of a rare kind of organisation which is characterised by absence of the institutionalization of the unit of husband, wife, and children as an independent entity or as one embedded in a larger entity, and which has struck a remarkable compromise with Islam. Of all the matrilineal systems in India, the one found in Lakshadweep islands is so far the least affected by the processes of change.

3.108 In the north-east, the matrilineal pattern is represented mainly by the Garo, the Khasi, and the Pnar in the States of Meghalaya and Assam. At least 44% of the Khasi and 30% of the Garo population is Christian, but adoption of a new religion has not drastically affected their patterns of kinship and marriage.

3.109 Since the last few decades of the nineteenth century, the matrilineal cultures in both the corners of the sub-continent have been exposed to processes of change brought about by introduction of market economy, opportunities for education and mobility, diversification of occupational structure, and changes in the legal framework. They have introduced differences in patterns of marital residence and composition of operative units, bases of economy, constituents of property, rules of inheritance, and authority structure.¹ Thus, the Nayars have functioned as an integral part of the larger caste system of Kerala and have mostly been landlords or non-cultivating tenants in the feudal system. The main occupation of men was military service while the women were home-bound. Cultivation was supervised by the elder among the males. Through hypergamous marriage, women were perhaps helpful in establishing favourable political connections for their own kin-groups. The traditional residential unit was groups of matrilineal kin in which the husbands were outsiders. Where, as among the Nayars and Tiyyars of North Kerala, the woman customarily went to live with the husband, she, and through her also her children, retained her right in the natal property. The Moplabs have been principally traders and have tended to accommodate the sons-in-law as resident members. The Khasis and the Garos have flourished in a hoe culture in which actual use of land and not absolute ownership has relevance. In the traditional land tenure system clans or matrilineages have commanded certain territories to be taken under cultivation by their members. Marital residence is predominantly uxorilocal in which the husband comes to live with the wife's people or in the wife's land.

3.110 Such differences notwithstanding, it is possible to view these matrilineal systems in relation to the status that they accord to their women. This is only to bring into relief the institutions and groupings based on patrilineal descent ideology which tends to view women

1. Schneider and Gough—*Matrilineal Kinship*; 1961 Dube, Leela—*Matriliny and Islam*; 1964 Kutty, A. K.—*Marriage and Kinship in an Islam Society*, 1972.

in a different way. There is also another valid reason for their consideration. It is the opinion of many scholars that matriliney was widespread in India in pre-Aryan days, on which the Aryan patriarchal culture was superimposed. The ambivalence in attitudes to women, a manifestation of which may be seen in the low status of women in the same community which also worships the Mother Goddess in various forms as a benevolent mother, a destroyer of demons, as an indignant goddess demanding attention and respect, is attributed to the matrilineal base of Indian culture.

3.111 In a matrilineal system the line is continued through women, but power does not usually rest with women. For this reason we should not confuse matrilineal systems with matriarchal systems. In the matrilineal systems political power, including social control and decision making in matters of land and other property, rests with men; in matriarchy this power should rest in women. Matriliney has been associated with such economic systems in which women are not really dependent on men and can manage most of the business of living themselves. Men render some help; they engage in hunting, fishing, trading and warfare. Simple agriculture, without the use of the plough, is suited to matriliney. The Garos have taken to plough cultivation only in the last few decades. The matrilineal communities in the south-west—the landowning Nayers in particular—are an exception, for their women do not engage in any productive work but they still enjoy full property rights and serve as links for inheritance and succession.

3.112 In matrilineal systems the woman is the perpetuator of the line. Children owe to the mother their social placement and it is through the mother that they acquire their right in movable as well as immovable property, and men succeed to positions of authority. It may however, be noted that the status of a woman does not depend on her proved fertility. As fertility is not subservient to the continuity of a male line, she does not have to prove her worth by giving birth to children or by producing children of one particular sex. She is a full member of her matrilineal group and cannot be alienated from the natal group on marriage. Among the Khasis the youngest daughter gets the major share of the ancestral property, for she is responsible for ritual of the house, death rites, propitiation of ancestors, and care of the aged parents. The Garo parents select one of the daughters to be the heiress. The Nayar girls are co-sharers of property with the male members.

3.113 Among these groups there is no premium on the birth of a male child. In fact among the Garos the birth of a daughter is more welcome for among them there prevails a feeling that a son is brought up only to work in the fields of his in-laws and not of his parents.

3.114 Where there is a greater concern with the maintenance of group boundaries and the retention of the status of the group, we find greater constraints on women because of her biological function of childbearing. For example, the Nayers living in the complex caste society would not allow their women to contract unions with men of groups lower than their own. Proper paternity used to be ensured by men of the lineage by having a control over the marital unions of the women and by the requirement of the payment of delivery expenses by the father of the new-born. In contrast, in this respect there appears to be much less rigidity among the Khasis. The children of informal unions with outsiders do not have a problem of group placement. The Garo women operate under greater restrictions as compared to the Khasis. This is because among the Garos the household—based on the bond between husband and wife—is the unit through which relationship between two lineages continued over generations and the husband has full managerial powers over the property of the wife. Among the Khasis and the Nayers, however, the maternal uncle or elder brother is the manager of ancestral property.

3.115 The degree of freedom of movement and operations is also directly related to the contribution of women to the economy. The Khasis, the Garos, and the Lakshadweep islanders stand in a better position compared to the Nayers. However, in all these communities division of labour between the sexes emphasizes differential rights and expectations. A Khasi proverb says, "war and politics are for men, while property and children are for women". Modesty is a female virtue. Muscular strength of men is recognised. As noted earlier, political organisation is in the hands of men. Rulers, chiefs, and elders are all men. Managers of property too are men—either matrilineal kin or in some cases husbands. Only for some matrilineages in Kerala and Karnataka women were entitled to headship. In the pattern of family living of the Garos and the Khasis, each generation sees the establishment of separate households of non-heiresses in which the women can hold considerable initiative and authority.

3.116 Women in matrilineal systems seem to fare better as members of kin groups and in dyadic (interpersonal) relationships. Husband's position vis-a-vis the wife is considerably different from that prevailing in the patrilineal systems. He is not her supporter, nor does she gain her status through him. She can, therefore, hold her own in this intimate relationship. She does not lose her children on divorce. The mother commands genuine respect from the son. Among the Nayers, the mother's curse is believed to be very powerful. Between brothers and sisters age is important for guiding their behaviour, but there is a feeling of awe and sacredness about the sister. The mother's brother is an authority figure, but on the whole, a woman is fairly secure in her natal home. Her rights give her a certain dignity; her consent is necessary for property transactions. She cannot, therefore, be ignored.

3.117 A comparative status evaluation of women in matrilineal communities with the help of indicators like economic power, religious responsibilities, degree of constraint at home and outside, and decisiveness and value of female roles shows that where a woman has an active role in the economy and besides subsistence, production also participates in handicrafts and marketing outside, and she enjoys better status and greater influence.

3.118 Matriliney is not a mirror image of patriliney. There is a certain inherent conflict in this system that authority is in male hands while group placement is in female hands. A husband is not incorporated in the wife's group; he is still needed in his mother's group for positions of authority and for taking decisions about the lineage land and other property. He is insecure because of minimum rights over his wife, hardly any rights over his children, and only right of use in the ancestral property. There is much suppression of fatherly inclination in a matrilineal system. It is based on the principle of the unity of matrikin and their collective control which cannot be sustained under the processes of change. With opportunities for education, new avenues of livelihood, and geographical mobility, a man can gain some control over his wife and children but this certainly disrupts the matrilineal system as such.

3.119 The disintegration of Nayar Taravads has come about because of political and economic changes and passing of new laws which changed the implications of marriage and conferred on individual members the right of demanding their shares. The Taravad still continues in its name which is used by its members for identification and in rituals. Within smaller kinship and domestic units, the matrilineal ideology still persists. The Nayar woman was homebound and did not contribute to the economy, but as a property holder and as a perpetuator of the line, she has enjoyed respect. The study of Taravads over generations tells us that Nayar girls used to receive education at home at the hands of a teacher. They are now taking advantage of educational opportunities offered to them. Old values and norms and their share in property help them to enjoy some status even in the new kind of family—husband, wife, and children which is becoming common because of diversifications of occupations and spatial mobility. However, to the detriment of women's status the Nayars have also moved towards Sanskritic rituals like those associated with marriage and are already settling marriages with the help of dowry.

Patrilineal Descent :

3.120 The overwhelming majority of the Indian population follow the patrilineal systems of descent. Though the influence of this system on institutions of family, marriage or the place and role of women vary between religions, regions, castes and socio-economic levels, there are some common underlying principles and patterns.

3.121 Patriliney is used for the formation and continuation of discrete kin groups e.g. clans which are often based on putative kinship and lineages of different orders. These have an important role to play in occupation of territories, use and ownership of land and other economic resources, and political and religious organisation of a community. Innumerable tribal groups of India and caste groups like the Jat and the Rajput may be mentioned here. Even where there are no corporate kin groups with a depth of a number of generations, recognition of patriliney variously known as 'Vansha', 'Kula', 'Khandan' is most common. Patriliney is emphasized with the help of a common name, a common place of origin, ancestor worship, common deity and rituals, pollution observed on death of patrikin, and such other means. Family in India is embedded in this patrilineal setting for patriliney is used as the framework for family grouping, big or small.

3.122 This has direct relevance to the place of woman in society. A boy is the perpetuator of the patriline; he will continue the family name. By contrast, a girl is of no use in this

respect. Her contribution in this sphere will have to be made in some other house. "A bird of passage," "another's property", "a guest in parents' house", "a thing to be preserved for an outsider", or "a thing which has to be given away" are some of the common descriptions of a daughter. Such notions may be overtly expressed or covertly held. In the urban areas even those parents who do not think in this way are made aware of it on various occasions. Educated girls revolt against this notion, but most of them have to be reconciled to it.

3.123 This transferability of the girl from the parents' house to the husband's house is a poignant reality of Indian society. Bida, Rukshat, and Doli signify a sorrowful goodbye to the daughter after her marriage. We would like to emphasize that this cannot be dismissed as a mere stereotype for it seriously affects the daughter's jural rights and her socialization and training. There was no tradition of daughters having a right of inheritance from the father except among the Muslims. There is ample evidence to show that among the Muslims daughter's rights have been often ignored. This is true of tribal India also. An Angami Naga may give his daughter fields to use during her life time after which they have to be returned to the patrilineal kin. A Mizo daughter gets her mother's weaving apparatus. Such examples can be multiplied but they only indicate inferior rights of daughters. Besides her right of maintenance as a unmarried girl and the right of being married off in an appropriate manner, a daughter basically has only a moral right to be invited to the natal house periodically and to receive gifts. By way of residual, contingent rights in her parental house she is customarily entitled to return there and seek support in the event of desertion, divorce and widowhood. But essentially this also is only a moral right, which is being eroded through the process of socio-economic change. Many widowed and deserted women whom we met during our tours told us that they could expect support and shelter from their family only as long as their father was alive.

3.124 The custom of retaining a daughter in the house by a son-less father by having a resident son-in-law, who should look after the property and would provide male progeny to be the rightful heirs of the maternal grandfather, does not alter the situation regarding daughters in general. Even today the provision of the daughter's share in her father's property in Hindu law is not fully implemented. Many daughters give up their rights of their own accord or may not fight for it. A common argument is that such insistence is likely to destroy the affection of brothers who at present feel morally bound to make appropriate contribution for her marriage and to give gifts to the sister and her children on various occasions such as festivals, weddings, child birth etc.

3.125 In the patrilineal and patrilocal kinship system, a son is looked upon as the father's natural apprentice and successor and supporter of the parents in old age. Sons are supposed to build up family prestige and prosperity. A father believes that he will continue to live in this world through the son. All this imparts a special value to the son.

3.126 A son is necessary for performing the prescribed rituals for his parents when they die and for the males in general. Even in domestic rituals a daughter cannot take the place of a son. Although ritual considerations are less compelling among the lower castes, the relative importance of the son has become generalized throughout Hindu society.

3.127 A daughter cannot effectively take the place of a son. Her loyalties change at marriage. As a popular saying in Telugu puts it, "Bringing up a daughter is like manuring and watering a plant in someone else's courtyard", for her services and affections are to go to others. A daughter is an easy source of disrepute for the family, particularly before marriage and also after marriage for she is always referred to as the daughter of such and such a family. Since marriage of a daughter is a matter of anxiety and expenditure; daughters, or at any rate, many of them, are not welcome. People complain that daughters have to be educated as well as married off. This puts a double burden on parents.

3.128 According to our survey² 44.57% of the respondents said that people react differently to the birth of a girl and a boy, whereas only 35.41% said that they do not react differently. It is commonly seen that in hospitals the menial staff asks for a larger tip at the birth of a son. In villages and towns the midwife expects twice as much at the birth of a son than at the birth of daughter. At the birth of her first baby, the mother gets better gifts from

2. We issued a questionnaire to all states to assess the status of women. 8000 completed questionnaires were received of which about 3/4 were from women and 1/4 from men. The report of the Survey is given in Appendix IV.

elders if the new born is a male. A first son, whether born as a first child or later, invariably gets a warm welcome. It is no wonder that while striving to get a son, a family may come to have a number of daughters.

3.129 Reaction to the birth of a particular girl depends on the socio-economic culture of the family and her place in the sibling group. The act of "giving away" a daughter is believed to earn special merit; her contribution in terms of domestic work and affection is also valued. Without a daughter a household is not really complete. And yet it is often remarked that whereas a couple miss something if they do not have a daughter, they are also saved of much worry and trouble.

3.130 Discrimination between sexes in the allocation of scarce resources in various fields such as nutrition, medical care, and education is directly related to the greater desirability of the son and transferability of the daughter. In most families girls are taught to see that brothers get more and better food. This attitude is internalised by girls often without being conscious of it; but a conscious effort is also made so that the girls inculcate the cultural norms which legitimise a differential treatment between girls and boys. In educated families we may not find so much of discrimination. Among tribal and other groups for whom a girl is an asset as a help in domestic and productive activities and as a bringer of gifts and cash by way of bridewealth, such discrimination is somewhat less. But discrimination in giving modern education at all levels is certainly related to the distinction between the rules of male and female children. According to conventional thinking, parents cannot expect economic support from the daughter, once she is married. Many still considered it improper to accept such support, even if it were offered. While the process of economic and social change is driving many families out of this pattern of thinking, the resistance of the in-laws still prevents many daughters from giving such support to parents, even when it is needed.

3.131 In her husband's house also a woman does not acquire rights comparable to those of the male members. Though ceremonially welcomed there with symbolic expressions of her future role as a contributor of prosperity and fertility, she is an inferior partner, and has to make a place for herself by establishing a relationship with the husband's kin, by learning the traditions of the family, and by producing progeny. The degree of incorporation expected of a woman in her husband's group differs in different communities and socio-economic levels.

3.132 Even in tribal and rural areas her rights to property are extremely limited. Men are the possessors and inheritors of land and its resources. In the cognitive map of the people the wife works on her husband's field and lives in her husband's house. Where divorce or separation are permitted she may have to leave if she does not satisfy and she may leave if she is not satisfied. Wife beating, still prevalent in our society, cannot be explained away only by the superior physical strength of the husband. The notion of the wife being a possession of the man is also responsible for it. Whether a widow has a right of usufruct on husband's land or whether she can inherit his land and other property, these rights are subject to her not remarrying. Children do not belong to the mother. In the event of divorce or separation small children may accompany the mother to be returned to the husband when they grow up. Even in those areas where woman's contribution to the economy is substantial and she has considerable leeway, the cultural notion that her role is only supportive has to be traced to patrilineal descent and patrilocal residence.

3.133 However, it is not the fact of patriliney by itself but its association with joint property, and joint family household and certain rules and patterns of marriage which lead to greater constraints over women and affect their position in an adverse way.

Family Organization :

3.134 Family in India largely exists in the framework of patrilineal descent, but differences in its form, function, and process are crucial to the position of women. A common image of the Indian patrilineal patrilocal family is that of three generational, commensal and coresidential group formed by close male patrikin with their wives and unmarried daughters. This group has a common budget, common residence, and common hearth. Joint landed property, a family business or family craft are conducive to this type of family as they require pooling of their skill, labour and resources.

3.135 In common parlance such a family has been described as "joint family". While the fundamental feature of a joint family according to Mitakshara law is a corporate group of co-

parceners i.e. patrilineally related males who have a joint rights to property for our purpose of examining the role and status of women, coresidence and commonalty and immediately identifiable characteristics of a joint family household. Such a consideration would also accommodate family patterns of those areas which have followed Dayabhaga Law and of Muslims and other communities. It would also accommodate families which hardly have anything by way of ancestral or immovable property but which may comprise more than one couple related through patrilineal links ; i.e. father and son's alongwith wives and children, or brothers and their wives and children. This type of joint living is observable in all parts of the country, though its incidence is variable, depending on (a) the culturally patterned time of break-up which differs across caste, community and area ; (b) on demographic profiles based on such factors as average life expectancy, average age of effective marriage, average number of children born per couple, age of father at the birth of various children etc ; and (c) on influence of education, spatial mobility and diversification of occupation.

3.136 The findings of anthropologists and sociologists about the familial patterns in India tell us that among the tribal groups of India, nuclear household is the most common and culturally approved form of domestic group. It is common for sons to have separate hearths as they get married or as they come to have one or two children. But the sons tend to have their houses close to their father's residence. In terms of locality the marital residence is largely patri-virilocal viz. where on marriage, a woman comes to live in the house or in the locality of her husband's father. Moreover, at any point of time, there may be some family units of husband, wife, and children with additional members like an aged parent of the husband or of his unmarried brothers and sisters. In some tribes like the Bhils in Rajasthan at least one of the sons is expected to live with parents. Only a few tribal groups like the Tharu, the Rabha, and some Gonds have joint family living during the life-time of the father as the cultural norm. We would thus like to conclude that by and large family organization among the Indian tribes does not impose as much constraint on the women as amongst non-tribal groups particularly the upper and middle strata. Joint family living appears to be more characteristic of land-owning and trading classes and of upper castes in general, though Brahmins are not at the top in this respect. It is least characteristic of Scheduled Castes. There are also regional differences, the Gangetic plains show higher incidence of joint families. One significant finding is that although the majority of households are nuclear, majority of people may live in joint and supplemented nuclear families. There is something like patterned rearrangements of family structure through time. There are definite group and regional differences in the customary time of break-up of the joint family and these differences appear to correlate with the incidence of joint families at any point of time.³

3.137 Indian patri-virilocal family has to be viewed in terms of its developmental cycle. It develops into a joint family after the marriage of a son and coming of a daughter-in-law. After the death of the father, brothers generally separate. In the villages of Andhra Pradesh for example, sons are expected to stay together along with the parents till all of them are married, after which they tend to separate, the parents generally choosing to live with one of the sons. Thus, joint family is broken into one relatively smaller joint family household and perhaps a few simple households. It is common to find an aged parent and dependent siblings living with a man and his wife and children. The role configuration of such households is undoubtedly different from that of a simple family. This type of household is found also in urban areas, though it is being subject to severe strains. Lack of adequate housing facilities sometimes leads to a break up, or it may, contrarily, compel a family to remain joint. Changing attitudes, aspirations and norms of different generations however, imposes a constant strain on joint families and often results in a break up. Occupational mobility of individual members have contributed to this process, and break ups in such cases take place without any serious overt tensions in the family.

3.138 An understanding of this family organisation entails recognition of degrees of jointness such as (a) jointness of property income or production and domestic grouping (b) jointness of property and income or production but not of domestic grouping and (c) jointness of property alone.

3.139 Another feature of Indian family organisation is the recognition of a kind of oneness

3. Karve, Iravati - *Kinship Organisation in India* ; 1958- Kolenda, Pauline- 'Region, Caste and Family Structure in Singer and Cohn (ed) *Structure and Changing in Indian Society*; 1968 Shah, A.M, *Household Dimension of Family in India* 1974. Madan, T.N. *Family and Kinship in Kashmir*; Leela Dubey-*Sociology of Kinship and Family An Analytical Survey of Literature* ; -1975 (forth coming).

between the father's and the son's households, or between the brothers households. A son's family is in a sense an extension of the father's family. In fact they are one 'family'. It is in this 'family' that the incoming wife has to be incorporated. There is always the contingency of younger siblings or aged parents of the man coming to live with his simple family household. Parents may divide their time between various sons. Vicinage and common business or property interests are conducive to the continuation of this sense of unity. Formal obligations towards relations by marriage and towards the daughters of the house are expected to be shared by this 'family'. Each generation experiences weakening of the ties between brothers, usually after the death of parents, and a growth of their own respective branches.

3.140 There is great emphasis on adjustability in the socialization of girls. In their training for sex-linked roles, they are made aware that they are girls and constantly reminded of the pitfalls they must avoid and of the uncertainties they must face. In urban educated families, there may be little discrimination between boys and girls in regard to food, medical attention and even education, but notions about the appropriate spheres of men and women are implicit in the general distribution of household work and in the concessions and freedom of behaviour permitted to the boys. In middle class families girls receiving education does not undermine their femininity. Even for young boys and girls of urban areas socialized in the sixties and the seventies, the need for reallocation of work and responsibility within the family is not emphasized. In joint living discrimination tends to be more pronounced. Even where girls are exempted from onerous tasks and a rigid routine, it is often with an expression of the feeling that since they will have to do all this after marriage, they should at least have some comfort and freedom in the parent's house.

3.141 Very few women start their married life independently in a simple household. Even when the husband is working away from his parents, a girl 'enters' as daughter-in-law in the house of the parent-in-law or husband's elder brother. In the first few years of married life, her behaviour is to be governed by the norms of a subordinate and submissive role appropriate for a daughter-in-law. She has very little hand in any kind of decision making, and has to start her new life under severe restrictions. These are more onerous in certain regions and in the well-to-do and middle classes than in poorer sections. Norms of segregation and seclusion of women, marriage rules, degree of distinction between bridegivers and bride-takers, as well as the extent of contribution of the woman to family earning are responsible for these differences.

3.142 Among the Muslims the prevalence of marriages between close kin, including children of two brothers, does not allow a sharp distinction between bridegivers and bride-takers, and where such marriages have taken place, rules of avoidance between a woman and her husband's kin may not be as rigid as among the Hindus of North India. But by and large similar rules of avoidance operate in Muslim families of particular regions and socio-economic levels.⁴ A distinct notion about women's subordinate role, general segregation and seclusion of women, and conception of patrilineal and patrilocal family have their effect on the status of the Muslim women in general.

3.143 In the authority pattern of a joint family the daughter-in-law is directly subordinate to the mother-in-law. According to a Telugu proverb, 'good and bad scorpions both have their sting: the difference is that one uses it more than the other'.⁵ A woman is at the peak of her life when her daughters-in-law are young and her husband is an active provider. It is only gradually that a daughter-in-law's position in her husband's family improves. In the words of Mandelbaum, "A young wife, of any Jati or region, usually has the lowest status in the family and is given the more onerous chores. Whatever goes away, she is apt to be called the culprit. Whenever the finger of blame is pointed, it somehow swings to her."⁶

3.144 With a long standing in their husband's family and as mothers, old and experienced women in the middle classes enjoy considerable authority and respect in the family and have a say in the decision making. They may even be consulted by men in matters of land, property and business.

4. "Even when a liberal family observes the rules of conduct less strictly and does not require the new daughter-in-law to cover her face, a perceptive observer can recognise the persistence of the custom if only from the young wives' traditionally silent and reserved behaviour" (Cora Vreede—De Steers *Parda* p. 31). The same point has been brought out by Shibani Ray in her doctoral dissertation on *Parda* submitted to Delhi University.

5. Dube, S.C. (1955). *Indian Village*, London, Routledge and Kegan Paul p. 155

6. Mandelbaum, David A. (1970) *Society in India: Continuity and Change II* Vols. Berkeley and Los Angeles: University of California Press p. 86.

3.145 Our survey however reveals that the women members of the family as a whole have a marginal role to play in decision-making. The only decision in which the woman takes an active part is in buying the foodstuffs. Male dominance in decision making is more pronounced in rural areas and among lower caste groups.

3.146 Decisions such as those about educational career to be pursued, about jobs and marriage, are collectively taken by the family, as revealed by low percentage of respondents saying that the children take these decisions 'himself/herself' (Table-II. 7). A higher percentage of respondents said that the 'sons' take their own decisions about the job they want to take and educational career. Though the overall percentage of female participation in such family decisions is lower it is slightly higher for decisions affecting the daughters, whereas the male members of the family were instrumental in deciding about the sons. On these issues again the major part in decision-making is that of the male members. Decisions about marriage of sons and daughters are mostly collective in nature.

3.147 A woman's authority is reflected directly in her control over the daughter-in-law, but it would be a mistake to view the position of a mother-in-law as indicative of the status of women in general. For, the same woman's status may decline with old age, widowhood, and with the daughter-in-law's coming into importance as mother and as the wife of the principal provider.

3.148 Besides her kinship status a woman's status in the family is also influenced by her husband's social position and his contribution to the family economy. Thus, her own efforts by themselves may often not be able to bring her status. In middle and upper classes the amount of dowry a daughter-in-law has brought and the gifts that her parents send also contribute to her status in the family with greater diversification of occupations in urban areas, the husband's status become more relevant for the woman's status.

3.149 With the authority of the mother-in-law or elder sister-in-law, little contact with the husband, and a general expectation of subordination, a woman's position in a joint family can be miserable. In this social milieu, it is difficult for a woman to evoke a balanced relationship with the husband and have a role in decision making. Many of the critical decisions of her life remain beyond her control, such as planning one's family, further training or education, taking up or continuing a job.

3.150 Our survey attempted to obtain first-hand data on the observance of rules of avoidance with the husband's kin by asking whether purdah was observed in the presence of the father-in-law, mother-in-law, husband's elder brother and husband's elder sister. The findings reveal that in the presence of the father-in-law purdah is observed in the case of 44.04% Sikhs, 40% Muslims, 39.19% Jains and 32.08% Hindus. Distribution by States reveals that such avoidance is highest in the Northern States in the following order: Haryana (72.61%); Rajasthan (62.18%); Delhi (60.78%); Himachal Pradesh (51.19%), Uttar Pradesh, M. P. Gujarat follow. Manipur also has a high incidence of avoidance. Figures for purdah in the presence of father-in-law are as follows: Kerala (4.29%), Tamil Nadu (4.93%), Mysore (5.44%) and Andhra Pradesh (9.40%). Maharashtra has a little higher incidence. In Goa purdah is wholly absent. Obviously this is a cultural difference, and indicates a major area of constraints for women in North India.⁷

3.151 A simple family allows a greater scope for a woman to have less restricted roles and greater part in management and policy decisions. As has often been pointed out, in a simple family a woman is subordinate to no other woman. The husband is dependent upon her for running the house, rearing of children, and management of social relations. Depending on the personalities of the couple and personal equation, a woman can truly be the mistress of the house. If she is educated and enlightened, she acquires a personality and a dignity of her own.

3.152 Thus situated a woman has much greater initiative to have sustained contacts with her own kin, not only as prescribed by custom (and mainly on formal occasions) but on a basis of equality in which both mother as well as father are equally relevant for reckoning kinship ties. It has been found that those away from the patrilocal village and settled in urban areas have greater freedom to choose their contacts.

3.153 Absence of large scale joint family greater freedom of association and movement, and economic contribution of both husband and wife towards living, a woman gets a better status

in the family. This is largely true of small scale agriculturists and artisans, but it is the women of the lowest category who seem to be more equal to their husbands—".....in certain senses women whose fortune it was to be poor enjoyed higher status than those who were rich".⁸ Participation in extra-domestic economic activities does not give these women status in the larger context because the work they do is of low prestige.

Marriage :

3.154 Many problems of major importance for women are linked with marriage. Various issues like age at marriage, procedures for contacting and executing marriage, customs of dowry and bride wealth, patterns of presentations between the wife's and the husband's kin groups, multiplicity of spouses, divorce and separation, widowhood, and remarriage are vitally relevant for assessing women's status.

3.155 In a patrilineal society, marriage signifies a transfer of the woman from her natal group to her husband's group. This is associated also with the notions of male superiority and secondary importance of the female in the continuity of the line. The 'seed', people believe, is more important than the 'field'. Concern with paternity tends to become stronger in a patrilineal system, and paternity can be approximately assured only by controlling women's sexuality. Another way adopted by some tribal groups is to establish definite rules for assigning the children born to an unmarried girl.

3.156 By and large insistence on low age of marriage for girls is related to avoidance of unclaimed progeny. Notions of vulnerable purity of women, value of virginity for girls at marriage, and a clear differentiation between primary marriage and secondary marriage for women, in castes which have the institutions of divorce and remarriage also follow from this. Widespread prevalence of child marriages in the country has its roots in this feature of human biology coupled to a concern for ascertaining paternity. The custom of mock marriage, in which a girl is ritually married to some object like a spear, an arrow, a pestle or Mahua tree, before she attains puberty also reflects the group's concern for the purity of women.

3.157 Existence of caste in Hindu society which traditionally limits marriage contacts within certain groups, rules against marrying within gotra, clan and lineage, regulations about not marrying certain types of close blood relations, and customs which enjoin or indicate reference for marriage between certain types of relatives or groups, make arranged marriage the most desirable form of marriage. Among Muslims and other religious groups also there are either certain socio-economic categories or groups and sections within which marriage is restricted. Where inter group marriages are approved, they are mostly on hypergamous basis, daughters being accepted from lower groups.⁹ The concept of purity of blood among Muslims seems to be responsible for preference for marriage between close relatives, particularly between children of siblings and for exchange marriages. Many Muslim groups in North and Western India, consider marriage between the children of two brothers as most desirable. A common explanation for this preference is offered in terms of the desire to keep the property within the family since, according to Islamic law, girl is also entitled to a share in her parental property.

3.158 In the south there has been a preference for marriage of a girl with her father's sister's son, and less generally with her mother's brother's son or with her mother's younger brother. Some castes practise direct exchange also. In the matrilineal communities marriage with mother's brother who belongs to the same lineage as the sister's daughter is unthinkable.

3.159 Marriage cannot be left to the young if these restrictions and preferences are to work. The institution of arranged marriage thus fits well with the social structure. Only in subsequent marriages one's own choice can be exercised.

3.160 In urban areas there is a trend towards ignoring for the sake of marital relations, the differences between caste groups which belong to the same generic category or are closely situated in hierarchical grading. Education, travel and liberalization of ideas have contributed to this trend. In the salaried sections economic considerations and status also play an important part in ignoring these distinctions.

3.161 Patterns of selection of marriage partner have become varied, particularly in urban areas. Between one's own choice at one end and the selection by parents without any consul-

8. Barbara Ward (ed) (1964) *Women in the New Asia*. UNESCO, p. 78.

9. For example such hypergamous patterns have been noticed in Kerala and Gujarat both of which have hierarchically graded groups of Muslims.

tation with the marriageable son/daughter at the other end, we find self-choice with parent's consent and parent's choice but with the approval of the marrying parties. Another intermediate pattern is one in which boy's wishes are given weight but it is not considered necessary to consult the girl with any seriousness. The position in which the elders alone decide is more prevalent among those who have little or no education.

3.162 However, the young who want to take their own decision in this area of life are not many. Respect for parents and desire to avoid uncertainties are behind this attitude. In many surveys of the attitude of college girls towards marriage an interesting combination of approval of greater mixing between boys and girls and preference for arranged marriages under parental guidance has been revealed.¹⁰

3.163 The studies made in the pre-independence phase and those made in the post-independence period highlight certain interesting points in selection of partners. Merchant who had made his study when romanticism was emerging in the young boys and girls found that 79.2% of his respondents opted for self-choice of the partner. This romantic approach to marriage does not last long and in G. B. Desai's period i. e. 1945, more respondents (68.2%) favour marriages arranged by parents. Perhaps in absence of any opportunity for free-mixing, the younger generation might be finding it very difficult to make independent choice, and hence basks under parental security. It is for this reason that we find Raj Mohini's, Kaker's and Ramanamma's data indicate younger generation in favour of arranged marriages. The major change noticeable is that with the impact of urbanisation and education individuals would like themselves to be consulted before the match is finalised.¹¹

3.164 Another aspect of arranged marriage, is the humiliation that a girl has to face when she is obliged to present herself repeatedly before marriageable boys and their relations and friends. In a few sophisticated families the two parties may be treated on an equal footing as genuinely trying to assess each other's suitability. But in the middle class families by and large this situation is most humiliating for a girl. Inter-caste marriages today are not common and inter-religious marriages are even rarer. The freedom movement which also included a rejection of social taboos, propagated inter-caste as well as inter-religious marriages. At that stage such marriages were regarded as not only progressive but also as patriotic. But the momentum of this ideology seems to have receded in the years since independence.

3.165 In a study done in 1969¹², only 24 out of 1036 i. e. 2.31% women had been married in castes other than their own. In the survey of affinal and consanguineous marriages conducted in 569 villages during the 1961 Census operations, only 966 of 1,33,775 marriages i. e. 72% have been reported to be across castes. The percentage of such marriages is 0.82 among the Hindu and only 0.01 among the Muslims.¹³ In another study made in 1972, it was found that 60% of respondents did not approve of inter-caste marriages.¹⁴

3.166 In the actual rituals and ceremonies of marriage the unequal status of man and woman becomes apparent. In a Christian marriage the bride has to be ceremonially given over to the bridegroom and the bride is exhorted to promise that she will love and obey her husband. In a Muslim marriage, the parties to the contract are in a sense the husband and the bride's 'wali', though with her formal consent. In many parts of India, a Muslim bride duly decorated and sitting with a modest demeanour, is actually lifted by the bridegroom and put in the vehicle which is to carry her to his home.

3.167 Like language forms, rituals and ceremonies not only reflect the unequal treatment accorded to the sexes in a social system but by repetition emphasize and perpetuate the same inequality of status. Marriage is essentially a social affair and therefore succeeds in indoctrinating coming generations in the ideology implicit in it. It is because of this conservative attitude, particularly among women that in order to enjoy the rights given by the Constitution or law women have to assert themselves. It is women who exercise the greatest vigilance over the members of their own sex regarding the observance of norms rooted in tradition.

10. Madan, T.N. *Status of Hindu Women in the Family and Household* (Paper prepared for the Committee)

11. Desai, Neera A. *Survey Report on Roles and Attitudes to Women* (Paper prepared for the Committee)

12. Hate, Chandrakala : *Changing Status of Women in post-independence India*, 1969, p. 41

13. C. G. Jadhav and N. K. Banerjee, "Customary Laws Regarding Marriage in Different Parts of India" (prepared for the Committee).

14. Raj Mohini, *Attitudes of Educated and Working Women about the Position of Women in Modernising Societies of India and Turkey*. A case study of Chandigarh and Ankara (1972, unpublished Ph. D., Thesis)

3.168 The rites of Hindu marriage stress male primacy and superiority. Kanyadan is a gift of the virgin daughter for purposes of Dharma, Artha and Kama. The parties to the transaction are father of the girl (accompanied by his wife) who is the giver and the bridegroom who is the receiver. When the bridegroom accepts the bride he tells her that union with him is bringing her prosperity, cultivation, and auspiciousness. In fact marriage is the first major Sanskara for a Hindu woman. Promises made by the two during the rites like circumambulation of fire, walking seven steps, or the brides changing over from the right to the left side of the groom are also worth noting. While emphasizing life, friendship and partnership for the two, they exhort the bride to follow the husband, to act according to his wishes,¹⁵ to remain steadfast in the loyalty and love. The bridegroom promises to protect and support the bride. He asks her to serve the elders of his family, be affectionate to the young, and not to be lazy. There is a special significance of the rite of showing the polar star (or Sun or Atar of Arundhoti) to the bride and of making her stand on a stone. She is to be steadfast like a stone and the polar star, not deviating from the right path and be calm and ready to suffer in silence.¹⁶

3.169 The basic rituals of Hindu marriage are not confined to the so called twice born castes but are enacted with some variation among other castes also. The process of acculturation has resulted in the lower groups inviting the Brahmin priest who recites the "mantras" and helps his clients to enact the Sanskrit rituals. The lowest groups in the Hindu hierarchy, who operate without a Brahmin priest and also very many tribes, are seen to imitate some of these rituals—*Kanyadan* being the most popular among them. It is perfectly congruent with their notion of transfer of the bride.

3.170 While it is true that kanyadan relegates the status of the woman, in accepting the bride, the bridegroom has to make the following promise to the bride's father—Dharme arthe Ca kame Ca naticarami (i.e. I will not transgress in the attainment of duty, wealth and desire). There is also no doubt that the bride is given a warm welcome in the husband's house and is referred to as Laxmi (Goddess of prosperity). Her future role as home-maker is associated with great prestige. She is the one who will give him progeny to continue the line, to free himself of his debt to ancestors, and to support him in old age. However, a close examination reveals that the rites of Hindu marriage stress male primacy and superiority. It is worth noting that the Brahmo Samaj had made special efforts to rationalise the ceremony of marriage and to drop those rites which perpetuated low status of women; the content analysis of Bengali and Marathi magazines and newspapers¹⁷ in the thirties and the forties of the present century show that there were strong reactions against these rites and "mantras" in some regional languages like Marathi and Bengali.

3.171 One important aspect of marital alliance in Hindu society, except in some parts of South India, is the unequal status of bridegivers and bride-takers. Just as woman is inferior to man, and bride is inferior to bridegroom, bridegivers are inferior to bride-takers. The son-in-law and his kind are to be respected. Marriage automatically establishes the lower status of the bridegivers. This distinction between bridegivers and bride-takers is far more pronounced in the Northern States, but it is also very much there in Central and Western India. In the South, because of common patterns of marriage among close kin which involves direct exchange or delayed exchange,¹⁸ systematic differences in the status of givers and takers do not emerge. In the context of a particular marriage because of the symmetrical relation between husband and wife slight distinction of status between wife's kin and husband's kin may be there; this is particularly so among the Brahmins with their emphasis on Sanskrit rituals. But the overall pattern creates an ethos of near-equality between bride-givers and bride-takers.¹⁹ Marriages in the South tend to be contracted within a limited group and thus the girl is not thrown in with strangers. There is a regular to and fro movement and contact between the wife's family and the husband's family so that the girl is not left along to face a hostile environment.²⁰ Rules of behaviour are not as stringent for a daughter-in-law as they are

15. The terms used are *sahagamini*, *Anugamini* and *Ardhangini*.

16. These verses and rites are explained in : Pandey, R. B. —*Hindu Samskaras* and Altekar, A. S. op. cit.

17. Undertaken for the Committee by Tanika Sarkar and Sudha Gogate.

18. In maternal uncle-niece marriage and brother's son-sister's daughter marriage, the group which had received a girl in the earlier generation gives a girl in the next generation.

19. Genetically viewed the custom of close kin marriages of South India may not be desirable but the kinship system it produces is certainly less harsh on women.

20. Kinship terminology in the South also does not allow sharp distinction between bride-givers and bride-takers.

in the North where the contrasting norms of behaviour for the daughter and the daughter-in-law tend to make the life of a woman alternate between freedom and restrictions, between harsh and soft treatment, and certain does not allow her to become a person. She has roles but no personality. It is well-known that in Western U.P., where marriages are arranged outside the village, daughters-in-law were not sent to the literacy classes while the daughters were allowed to join. In Begusarai in Bihar the Committee members found that daughters of the village could go in groups for election campaigning but the daughters-in-law were not permitted to do so.

3.172 The distinction between bride-givers and bridgetakers is made harsher by the pattern of unilateral gift-giving. The son-in-law, and his parents are entitled to receive gifts from the girl's parents on different occasions but the latter are not even supposed to accept any food at the son-in-law's house. Common people in the North observe this rule strictly. These differential norms of behaviour are likely to be more pronounced in rural areas where the village is a kind of in-law village, or parental village, and particularly in such castes and communities whose women do not work outside the home. These norms of behaviour operate in urban areas also. It is not uncommon to encounter a girl in her parents house in a modern outfit and the same girl in her in-law's house in traditional clothes, partially veiled.

3.173 Practice of hypergamy, i.e. marriage between man of higher and woman of lower groups, brings down the position of women. Within a caste, groups are ranked as of relatively high or low status. Practice of hypergamy is found among such groups as the Rajput and the Jat of North India, Anavil Brahmin and Patidar of Gujarat, Maithil Brahmin of Bihar, and among the Kanyakubj Brahmin and Sarayupari Brahmin to some extent. In hypergamy clans and lineages are of unequal status; gotra and families among the Brahmin may also be of unequal status. As women in hypergamous marriage are treated as of inferior status, their incorporation in the husband's family is a painful process. Female infanticide among the Jat and the Rajput was partly a consequence of hypergamy, for the girls of the highest groups had very little choice for marriage as boys of these groups could marry lower down. Dowry is generally high in hypergamous communities.

3.174 *Polygamy*: Both the variants of polygamy, viz. polygyny (plurality of wives) and polyandry (plurality of husbands) are found in India.²¹

3.175 Polyandry is confined to tribes like the Toda in the Nilgiri, groups like the Khasa in the Jaunsar Bawar area of U.P. and the people of Kinnaur and Lahul and Spiti in Himachal Pradesh. Some of these, like the Khasa, belong to the Hindu fold and are divided into castes. But today all these polyandrous groups of the Himalayan region are declared as Scheduled Tribes, and hence do not come under the limitations imposed by Hindu Law regarding monogamy. They practise fraternal polyandry. This group is numerically insignificant. But among the higher castes of Jaunsar-Bawar there is now a tendency of taking as many wives as there are brothers but there appears to have grown a vested interest in polyandry, particularly since they have been declared as a Scheduled Tribes with all its privileges. However from the point of view of women's status it is worth noting that these are patrilineal and patrilocal groups and a woman has absolutely no right over her children and property. Polyandry in the patrilineal setting far from being a privilege, is an obligation for a woman to allow sexual access to the rightful share.

3.176 Social reaction against polygyny as an indignity offensive to the status of women was one of the most marked features of the 19th Century Reform Movement. While the acceptance of monogamy as a necessary principle for civilized living became widely prevalent among the educated classes, there was a difference of opinion regarding the action necessary for eradication of this practice. While leaders like Iswar Chandra Vidya Sagar and the Brahmo Samaj and Christian Missionaries wanted legislative action to prohibit the practice, others believed that it would die a natural death with the spread of education. Partly as a result of this social reaction and partly due to 'declining material prosperity', among the classes which had earlier practised polygyny, the prevalence of this practice declined considerably over the last hundred years.²² The demand for legislative action against polygyny

21. In popular usage the term polygamy refers to plurality of wives only. Elsewhere we have used it in the popular sense.

22. This was noted by the District Gazetteers in the earlier years of the 20th Century. O' Malley in the District Gazetteer of Howrah, 1919 reported that polygyny has practically disappeared, "chiefly from the pressure of public opinion". See also Majumdar, R. C. — *British Paramountcy and Indian Renaissance*—Chapter IV.

gained momentum under the influence of Gandhiji and made women's organisations increasingly vocal, resulting in legislative measures in different provinces and in the princely States even in the pre-independence period²³. The Hindu Marriage Act introduced the principle of monogamy in 1955. As already mentioned, it is only in Muslim Law that plurality of wives is still permitted.

3.177 A study undertaken by the Census of India in 1961,²⁴ however, found polygyny to be still prevalent among most communities to a certain extent, though its incidence had declined

Incidence of Polygynous Marriages among Tribals

State	1931-40			1941-50			1951-60		
	Total	No.	Percentage	Total	No.	Percentage	Total	No.	Percentage
Orissa	22	3	13.64	16	2	12.50	59	7	11.86
Arunachal Pradesh	324	30	9.36	463	82	17.71	664	123	18.52
Total	346	33	9.53	479	84	17.53	723	130	17.98

Source : Census of India 1961 (Incidence of Polygynous Marriages in India)

Incidence of Polygynous Marriages among Hindus

State	1931-40			1941-50			1951-60		
	Total	No.	Percentage	Total	No.	Percentage	Total	No.	Percentage
Gujarat	810	21	2.59	1089	36	3.31	1340	15	1.11
Jammu & Kashmir	165	11	6.67	257	11	4.28	365	15	4.11
Madhya Pradesh	652	49	7.52	1021	83	8.13	1313	62	4.72
Madras	3134	225	7.18	4188	383	9.15	5571	380	6.82
Maharashtra	1043	83	7.96	1725	144	8.35	1899	179	9.43
Mysore	4619	272	5.89	6686	368	5.50	8369	298	3.57
Orissa	356	14	3.93	536	26	4.85	630	26	4.13
Rajasthan	558	18	3.23	834	33	3.96	1086	41	3.78
Uttar Pradesh	882	23	2.61	1233	24	1.95	1363	11	0.81
Delhi	16	2	12.50	17	1	5.85	15	3	20.00
Himachal Pradesh	1062	202	19.02	1525	289	18.95	1635	191	11.68
LM&A Islands	—	—	—	1	—	—	1	—	—
Manipur	92	2	2.17	137	9	6.57	169	3	1.78
Pondicherry	189	18	9.52	231	14	6.06	296	12	4.05
Tripura	352	7	1.89	519	10	1.93	548	9	1.64
Arunachal Pradesh	14	—	—	45	4	6.89	50	4	8.00
Total	13944	947	6.79	20044	1435	7.15	24659	1249	5.06

Source : Census of India 1961 (Incidence of Polygynous Marriages in India)

23. Baroda Government passed an Act in 1942 followed by Bombay 1946 Madras 1947, Saurashtra 1954. Vide Chapter IV—Para 4.31 Foot note 34.

24. *Incidence of Polygynous Marriage in India - Census of India 1961* (Mimeographed).

Incidence of Polygynous Marriages among Muslims

State	1931-40			1941-50			1951-60		
	Total	No.	Percentage	Total	No.	Percentage	Total	No.	Percentage
Gujarat	153	12	7.84	172	17	9.34	273	16	5.86
Himachal Pradesh	14	2	14.29	23	2	8.70	24	1	4.17
Jammu & Kashmir	639	55	8.61	1012	69	6.82	967	43	4.44
Madhya Pradesh	16	2	12.50	20	1	5.00	36	2	5.46
Madras	191	11	5.75	242	16	6.61	286	9	3.14
Maharashtra	15	-	-	29	2	6.90	36	-	-
Mysore	651	23	3.53	962	48	4.99	1125	42	3.73
Uttar Pradesh	198	10	5.05	325	19	5.84	367	14	3.81
Rajasthan	55	1	2.00	63	4	6.35	78	4	5.13
Delhi	18	1	5.56	38	2	5.26	49	-	-
LM&A Islands	368	41	11.14	613	53	8.65	775	37	4.77
Tripura	122	20	16.39	201	29	14.43	208	14	6.73
Total	2440	178	7.29	3710	262	7.06	4224	182	4.31

Source : Census of India 1961 (Incidence of Polygynous Marriages in India)

over the decades. The survey was based on a total sample of nearly 1 lakh marriages. 5,911 marriages in the sample were found to be polygynous. If the time when these marriages had taken place is ignored, then the incidence was found to be the highest among the tribal communities (15.25%), Buddhists 7.97%, Jains 6.72%, Hindus 5.8%, and Muslims 5.7%. As, however, the marriages covered were not selected on random sampling basis, the Census authorities observed that it would be risky to draw any quantitative generalisation from this data. "But at the same time, it has to be kept in view that the size of the sample is fairly large and hence until more valid quantitative data are available, one would be justified to question the validity of the prevailing notions in this matter." The most interesting finding of the Survey was regarding the trend of change in incidence. According to the data, the highest incidence, (7.15%) in the Hindu Community was found for marriages performed between 1941 to 1950, after which it declined to 5.06% in 1951-60 and the frequency declined steadily. Among Muslims, the highest incidence was found between 1931-40 (7.29%), after which it declined steadily coming to 4.31% in 1951-60. Among the Jains the highest incidence was recorded between 1931-40 (13.63%). As for Buddhists, the highest incidence (10.93%) is recorded between 1911 and 20. Incidence during 1951-60 was 8.13%. Amongst the tribal community, however, the trend has been markedly different. The lowest incidence 0.68% was between 1921-30 and the highest 17.98% during 1951-60.

3.178 Most tribal groups in India permit polygyny. Those not permitting it are very few; most of them either follow matriliney or recognise both the mother's and the father's line. The most important culturally accepted motivations for polygyny are barrenness of the wife, economic advantages accruing from plural marriages, and gain in prestige. Entanglements culminating in bringing another wife are also accepted by the society. Tribal groups like the Bhill in Rajasthan, the Bagata, the Raj Gond, and the Birdugond, see economic advantage in polygyny in two ways. Wives can contribute to the agricultural and other economic activities by their own labour and by producing sons who would supply the needed labour for working in the fields, tending cattle, and building houses. In a patrilineal setting where land and other economic resources belong to the men and where women's contribution to the economy is substantial, this can prove to be a strong incentive. Another incentive is that of prestige. Where bride price is high, it needs resources to obtain more than one wife and

having more wives adds to one's prestige. Chiefs, village headmen, and such other important men like to have more than one wife. During our tour of Arunachal Pradesh, we were informed by many persons that polygyny was mainly practised by Chiefs or the headman. We heard the same in Nagaland. It is interesting to note that such marriages among Christian Nagas still receive customary sanction though they would not be performed by the Church.

3.179 Even though a society permits polygyny, it is only a few people who can take advantage of it, and it is seen that only men of some means and power can avail of it. In many tribes the fear that the coming of a second wife would lead to clashes and the first wife may leave and go to some other man, acts as a deterrent. A temporary phase of polygyny is also not uncommon.

3.180 Among the social reasons, the most important are barrenness of the wife, her prolonged sickness and the absence of a son. In some communities, the custom of marrying one's elder brother's widow, sometimes results in polygyny. Another social reason, which has become increasingly important in recent years, is the cultural and communication gap that often results when the wife is illiterate or uneducated and the husband receives modern education. Most of these cases result from child marriages. With the changing aspiration pattern of social needs of the educated husband, they find their first wife a social handicap and turn in many cases to a second marriage. Many of them do this not without serious misgivings. In some of these cases their offers of divorce to the first wife are rejected by the latter, who find themselves unable to face the consequences of a divorce, because, the status of a deserted wife is better than that of a divorcee. Marriage status gives them certain rights in their in-laws home which would be denied to them if they were divorced. In most of these cases their reluctance to divorce lies in their social and economic dependence and absence of the necessary equipment for earning. Resistance of their family may also be an added reason for their preparedness to put up with the indignity and unhappiness rather than seeking a divorce.

3.181 An important motivation of polygyny, however, is economic gain. Where women are not a burden but are self-supporting and contribute substantially to the productive activity like cultivation and handicraft, they are real assets and a man can gain by having more than one wife. (Its long term implication that more hands will be available for work also has its temptations for some). Thus polygyny in Manipur clearly indicates that sometimes women's worth as productive workers may be a hindrance for their unopposed status in the family. Economic motivation for polygyny also operates among artisan groups, both Muslim as well as Hindu. Religious allowance for a man to marry as many as four wives at a time proves useful for the Muslim inhabitants of a district in Karnatak engaged in lacquer work, for what they gain by having extra hands to work is much more than what they have to spend on their keep. This certainly is a form of exploitation of women.

3.182 While the Census study indicates that the incidence of polygyny among Muslims is not as high as it is believed to be, there is no doubt that the prevalence of legal sanction for polygyny caused widespread resentment among the women of this community. During our tours, we met many groups of Muslim women in different parts of the country, who expressed their unhappiness and resentment at the continuation of this situation. We met many, who have been abandoned by their husbands as a consequence of a second marriage. Many others have to acquiesce in the second marriage because of their economic dependence. They also expressed a view that a protest against this institution from them had invariably resulted in acute oppression against which they obtained no protection from society. While it is a fact that changes in the law alone cannot eradicate the prevalence of this practice, it is our view that continuing sanction by the law in a way perpetuates it. The role of law in such social matters in this country has usually been to act as a norm setter in order to arouse the public conscience. We cannot appreciate the denial of similar support to Muslim women in their struggle against this social custom.

3.183 Even though it is nearly 20 years since the law was passed banning polygyny for Hindus and making it a criminal offence, we regret to admit that the practice has not been eradicated altogether.* Apart from the findings of the Census Study in 1961, the Committee

* One of the reasons for the continued prevalence of this practice is the flexibility permitted in customary forms of marriage. Such as 'Natra' in U.P., Rajasthan and parts of M.P. and Gujarat, and 'Reet' in Himachal Pradesh.

during its tours heard large number of complaints from women that their husbands had married again. Their lack of knowledge about their legal rights and social acceptance of the situation make the position of these women deplorable. In Andhra Pradesh, the Committee was told about the prevalent practice of wives being compelled to sign a document giving their permission to the re-marriage to their husbands. Dependence on their husbands, both socially and economically and inadequate social condemnation of the men's action are the causes of the wives' acquiescence. Most of them believe that signing such a document deprives them of their legal right of redress. Education; economic independence and fuller knowledge of their legal rights can ultimately free society from the stranglehold of these traditions. We feel strongly that women's voluntary agencies should launch a campaign against this type of marriage by ostracising the men who commit bigamy and by mobilising public opinion, particularly among women, to resist this practice.

Bride-price and Dowry :

3.184 **Bride-Price :** Solemnization of marriage is a social occasion. In the Indian setting it signifies the creation of a bond between two individuals and also between their families. It involves, with a few exceptions, the transfer of the wife to the husband's family. Two major types of transfers of material wealth accompany marriage: in one the wealth travels in the opposite direction of the bride and in another it travels along with the bride in the same direction. The former is bride-price; the latter is dowry. They need to be considered as components of marriage because of their implication for the status of women.

3.185 The patrilineal tribal groups of the Indian subcontinent customarily pay bride-price.²⁵ The form and amount of bride-price vary from region to region and from tribe to tribe. Some pay only cash, others make the payment in kind, and still others pay the bride-price in both cash and kind. The second category i.e. payment in kind, includes a wide range of subjects such as clothes and ornaments, tools and implements, liquor and grains, and cattle and goats. The Uraon of Chotanagpur take sets of clothes for the bride's relatives, while 'the Ho' and the Munda concentrate on heads of cattle; so also in Arunachal Pradesh where mithun is the customary bride price. The AO Naga give baskets of paddy and an indigenous dagger. Bhumias of Orissa have to offer some cash, five to six sarees, and three goats as bride-price. Bargaining for bride price is common. A survey of recent information indicates that in many tribes bride-price has increased manifold. The following table²⁶ will give some idea of the trend :

<i>Name of Tribe</i>	<i>Traditional bride-price (in rupees)</i>	<i>Present bride-price (in rupees)</i>
Irular (Tamil Nadu)	0.25	100
Sounti (Orissa)	3.00	40
Mahali (Orissa)	5.00	80
Mullukurumbe (Kerala)	5.50	100 onwards
Mal Paharia (Bihar)	12.00	20-50
Kurumba (Karnataka)	32.00-80.00	200-210
Binjhal (orissa)	60-100	400
Bhil (Rajasthan)	60-100, 120	300-1000
Panchcha Maleyelee (Tamil Nadu)	10.50	100-300

3.186 Many castes on the lower rungs of the hierarchy and some on the middle rungs also have a tradition of bride-price. As they come under the influence of Sanskrit values they tend to give up their custom and adopt instead the custom of dowry.

25. All the 116 tribal groups covered by village survey monographs in 1961 Census operations pay bride-price. Jadhav, C.G. and Bannerjee, A. K. prepared the table for the Committee on the Status of Women in India.

26. *Tribal Marriage Institutions in India : Paper prepared for the Committee.*

Some Tribes and Castes paying bride-price

Zone	Scheduled Tribes	Scheduled Castes	Non-Scheduled Caste Hindus
Southern	29	36	49
Eastern	45	7	2
Northern	3	9	9
Western	34	5	5
Central	5	2	—
	116	59	65

3.187 Analytically speaking, payment in cash and kind to the bride's father by the bridegroom's father is made in exchange for the authority over the bride which passes from her kin group to the bridegroom's kin group. The idea of compensation for the loss of a productive worker is also implicit in it. This lends some status to a daughter. The data show that so far as the girl's status in her natal group is concerned, in the communities which follow the custom of bride-price, a daughter is not regarded as a burden, and parents do not have to dread the time when she will have to be married. At her departure a daughter is likely to bring some material wealth. Birth of a daughter is, therefore, not regarded as some kind of a calamity. However, there is a flavour of buying a wife in the transaction of bride-price. The fact that wealth has been spent to bring her home is not easily forgotten. When a woman leaves her husband and goes to another man, in the settlement of the amount of compensation to be paid by the latter, a reference to the amount of bride-price paid by the former husband comes in again. This certainly speaks for the relatively low status of the woman vis-a-vis man. In spite of it, in these societies the woman has some bargaining power in regard to her relationship in the husband's house. The man cannot drive her too hard or else she will leave and he will have to pay bride-price to bring another wife. The compensation that he will get for her will not be the same as the bride price that he will have to pay.

3.188 Among the underprivileged sections, the custom of bride price often places a man and his family in debt. It has been responsible for pushing many tribal and caste groups into the clutches of money lenders.²⁷ It is well known that in South India the landless farm labourers owed their almost permanent servitude to particular landowning families for generations because of the debts incurred during marriage and death.²⁸ It is reported that among some Scheduled Castes of a Uttar Kashi region a wife may be sent for prostitution to clear the debt incurred in her own marriage.

3.189 Both from the point of view of improvement in the conditions of life of the people and for changing the conception of woman as someone's possession, the custom of bride-price needs to be eradicated. In fact the law aimed at prohibition²⁹ of dowry is directed against bride price also.

3.190 With a rise in social status by economic prosperity or regular wage earning and under the influence of the high prestige groups who practise dowry, many castes of the lower and middle rungs and even some tribal groups are shifting towards dowry. When it is adopted by the well-to-do families in the caste, the poorer ones also succumb to this change for it becomes a trend in the marriage market. The peasants of the villages in Karnatak have changed over from bride wealth to dowry over the last fifteen years or so.³⁰ In Andhra Pradesh, the Golla or the caste of cowherds and the nomadic Lambadas have been gradually changing to dowry. This was also confirmed by our tour of the Himachal Pradesh. Various villages studied by individual scholars and by the Socio-Economic Survey Division of the Census of India have reported this trend. Whereas the people changing over to dowry consider this a matter of

27. Dube, S.C. *The Kamar*

28. Epstein, Scarlett

Dube, S.C.

Gough, K.

Steed, G.

Harper, E.B.

Economic Development and Social Change in South India pp. 105-6, 270
Indian Village

"The Social Structure of a Tanjore Villiage" in *Village India* ed. by M. Marriot. pp. 41-42.

"Personality Formation in a Hindu Village in Gujarat" in *Village India* ed. by M. Marriot. pp. 120.

"An Unsuccessful Low Caste Movement" in Silverberg :
Social Mobility in the Caste System in India : Comparative studies in social History supplementary III. 1967. pp. 36-55.

29. The Dowry Prohibition Act, 1961.

30. Epstein, Scarlett, *South India : Yesterday, Today and Tomorrow*.

prestige, the result of it is to make the daughter a liability. A girl's value to her husband and the in-laws is enhanced when she is accompanied by a substantial dowry. Epstein's study³¹ of the peasants of Karnataka clearly shows that withdrawal of women from productive activities along with absence of training of girls in agricultural work is one of the potent factors contributing towards a change over from bride wealth to dowry.

3.191 Dowry : Technically, dowry is what is given to the son-in-law or to his parents on demand either in cash or in kind. There are baffling regional variations in people's understanding of dowry. From the point of view of women's status the custom of dowry has to be looked at as constituting (1) what is given to the bride, and often settled beforehand and announced openly or discreetly. The gift, though given to the bride, may not be regarded exclusively her property; (2) what is given to the bridegroom before and at marriage; and (3) what is presented to the in-laws of the girl. The settlement often includes the enormous expenses incurred on travel and entertainment of the bridegroom's party.

3.192 In the continued relationship between the two families, gift-giving characterises the occasions of visits, fasts and festivals, and ceremonies like those associated with marriage, childbirth, initiation etc., particularly in the first few years of marriage. It is a matter of general observation and experience that in such gift-giving, the bride's family is under compulsion and heavy pressure. These subsequent expenses are often regarded as making up for the deficiencies in the dowry and can cause severe hardship to the girl's parents. In the first few years of marriage, the girl's treatment in her husband's house is linked to these gifts. Thus "Dowry is not one isolated payment but one array of gifts given over time. But it is also clear that amongst the ways of payment that constitute dowry, that given at the time of marriage is most important and conspicuous."³²

3.193 Dowry is linked with a number of social and cultural elements which sanction, justify or explain the practice.

(a) It has been viewed as a kind of premortem inheritance of the daughter who has to leave her natal family to join another but who has some rights over the former. Dowry thus stresses the notion of female property and female right to property.

3.194 Among both the Hindu and the Muslim communities, this notion of dowry as the realisation of daughter's right is prevalent. It is commonly expressed that claim to dowry takes care of a daughter's right to inheritance given by Islam. In Hindu law, a daughter's claim to maintenance in the joint property included her marriage portion with the help of which she should be married properly. An important ingredient of Stridhan are the gifts given to her by the bride's relatives during and after marriage. In many communities in the South and Maharashtra, such as Mangalore Christians, Tamil Brahmins, Deshasth Brahmins, the bridegroom's parents customarily buy the ornaments to be given to the new daughter-in-law out of cash received from her father.³³

3.195 (b) A daughter should have something to fall back upon in times of crisis, and also for setting up her house. This is so deep-rooted in the minds of the people that ornaments, particularly of gold are regarded as "security". Ornaments give a girl a special position in the in-law's house. The bride's parents associate their own prestige with these valuables. In the upper castes of Tamil Nadu and Karnataka, diamond ear tops constitute the most prestigious item of jewellery to be given along with a pair of gold bracelets and maybe a necklace.

31. Ibid.

32. Tambiah, S.J. "Dowry, Bridewealth and women's Property Rights" in *Dowry and Bridewealth* by Jack Goody and S.J. Tambiah.

33. Adhyagnyadhyavahanikam dattam Ca pritikarmani Bhratrmatrpraptam Sadvidham Stridhanam Smrtam.— Manu IX 194.

The above stanza of Manu is delineated by Altekar as follows : 1 to 3 gifts given by the father, the mother and the brother at any time (4) gifts of affection given by the husband subsequent to the marriage and (5-6) presents received by the bride at the time of the marriage and at the time the bride is taken to her new home. In the days of later Sumriti writers the definition of stridhana had expanded and it included property which was obtained by a woman either as a maiden or at marriage or after marriage from her parents or the family or relatives of the parents or from the husband and his family. (Altekar, A.S. op. cit. pp. 262-63). What was not included was immovable property given by the husband and what was obtained by the woman herself after her marriage by her own labour or from strangers (Kane, S.V.—1946, op. cit pp. 779-80)

It is not considered odd for the bridegroom's mother or other relatives to examine the jewellery on the person of the bride and comment on it. All over India, jewellery (gems, gold and silver) is given importance. There is a new trend in more sophisticated urban families to give cash or savings certificates, but jewellery remains the most accepted form of security, since it also has an exhibition value.

3.196 Among the landowning castes of Andhra Pradesh like the Reddy and the Kamma, or the Paganeri, and the Ambalakkareu of Tamil Nadu, a father may give to the daughter land and jewellery. The cash has to be given to the bridegroom's father or the bridegroom himself, but land is registered in the name of the daughter. During our tour of Andhra Pradesh, we received two points of view. One group supported the practice on the ground that while cash or movables can be disposed of by the in-laws, land remains as secure property of the woman. The other group felt that as the land was looked after by the father or the brother, the income from it that reaches the woman depends on the whims of the former. This often reduces the woman's share, particularly after the father's death.

3.197 Pots and pans and beds and beddings are important items included in bridal gifts. These are mostly regarded as belonging to the couple. In the case of utensils, however, customs differ. In North India where there has been a tradition of large utensils being given to the daughter, they are generally in the control of the in-laws.

3.198. (c) Living in the social milieu of inequality, there is a genuine desire on the part of parents to see their children well-placed. "It was a matter of preserving the status of a daughter as well as son. Sons might inherit all the productive capacity but the daughters had to be assured of marriage that would provide them with the same (or better) standard of life to which they were accustomed."³⁴ The daughters thus have to be endowed with some property, generally moveables. Transfer of wealth at the time of marriage enables a girl to enter into a desirable match. Hypergamy is based on consideration of status by birth. We find that caste groups following hypergamy have had a high incidence of dowry.

3.199 In the past few decades there has been a diversification of occupations within endogamous groups, and a sharp rise in economic and social inequality between their members. This has been one of the most important inducements for dowry,³⁵ and operates at all levels of the society. The amount of wealth that is involved may range from a few hundreds to lakhs but its weight on the persons is not substantially different. This motive is often expressed in the form of a fond desire of the parents to see that their daughter is not placed in conditions to which she is not accustomed. Whether it is about working in the fields and carrying water, about cooking and washing clothes, or being accustomed to the use of a refrigerator, a car, and an air-conditioner, similar arguments operate. Desire for special mobility for the daughter and indirectly for the parental family is also very strong.

3.200 The most common rite associated with Hindu marriage is kanyadan. It is recommended in the Shastras that she be duly adorned with jewellery and then gifted away.³⁶ This is related to the desire to obtain security and good status for the daughter. Increasing the value of the girl with jewellery and household goods is specially prevalent in these sections of the Indian society, irrespective of religion, in which women are homebound and do not contribute to the economy of the family in terms of gainful work.

34. Goody, J. K.—"Bridewealth and Dowry in Africa and Eurasia". In Goody, J. and Tambiah, S. J.—*Dowry and Bridewealth* 1973 p. 25.

35. "In ordinary families, however, the amount of dowry was a nominal one. It was a voluntary gift of pure affection and presented no impediment in the settlement of a marriage till the middle of the 19th century. It is only in the last 50 or 60 years that the amount of the dowry has begun to assume scandalous proportions. A good education, a lucrative appointment, or a good footing and economic position of a youth."

Altekar, A. S., Op. Cit.

36. Tato vinitam Kalyanim Kanyam Kulavanvitam Alankrtryarhate dadya vivaho bramha ucayate. The above verses have been written in relation to Brahma form of marriage. The idea of gift of the virgin daughter only bedecked is also clearly expressed in the booklet on procedure of marriage which are being widely used in India today. A few excerpts from these booklets may be quoted here:

Imam Kanyam Salamkaram prajapati daivatam Svargakamah patnivenaham sampradade *Sukravivaha Paddhati*

Commentator Shri Vasudeva Thakur Bhakshi, published by Babu Raghuvar Sinha, Bookseller Madhubani, Darbhanga.

Kanyam prajapati devatyam yathasaktyalan krtam.....tubhyamaham sampradade. *Sukravivaha Paddhati* prepared by Shri Chaturthilal, son of Kasturichandra of Ratangarh, Bikaner.

3.201 According to Hindu Shastras the meritorious act of Dana* or ritual gift remains incomplete till the receiver is given a Dakshina.³⁷ So when a bride is given over to the bridegroom, he has to be given something in cash or kind. This Varadakshina has assumed enormous proportions. The bridegroom and his kin group are believed to have done a favour by accepting the girl in their fold, for marriage with an appropriate person is the path of honour for a girl. They, therefore, deserve to be honoured with gifts. They are higher in status by virtue of their being bride-takers. In the South and in Maharashtra, there is some exchange of gifts between the two parties. In Bengal the close women relatives of the girl are honoured with some presents. But nowhere are the parties equal and the proportion of gifts for the bridegroom and his people is much larger. Non-Hindu communities also tend to manifest these regional variations.

3.202 In north India, what the bridegroom's parents bring for the bride is supposed to go into the bridegroom's family because the bride is joining his family. In the South, traditionally there is a greater respect for Streedhan which includes also what has been represented by the husband's family. But in groups which have the custom of divorce/separation and remarriage the general custom is to deprive the women of the valuables that she has received from her husband and his people, in case the marriage breaks up. Only if the husband is proved to have been at fault the situation may be different.

3.203 In actual practice it is difficult to locate the principles enumerated above in a reasonable form. As regards pre-mortem inheritance, in dowry there is hardly any consideration of rightful share for the girl. It is demanded and given without relation to the actual wealth of the girl's father; it is also not equal for all the daughters and its payment often plunges the girl's father and brothers into debt.

3.204 This fact was brought to our notice in practically every State. The financial burden on the family worsened, with increasing rates of interest for such loans, which ranged from 5% per month with security to 10% in the absence of security. In exceptional cases the rate even goes up to 18%. Of the expenses incurred by the father only a small portion consists of the belongings of the girl herself. Often even her jewellery is not in her control and it does not help her in times of crisis. The household goods given at marriage may not belong to her. In north India they may be disposed of by the in-laws, and even where they are in use in what she calls her home, in the event of separation, nothing appears to belong finally to the woman.

3.205 The settlement of dowry has all the characteristics of a market transaction. What was originally intended to be a token Dakshina for the bridegroom has now assumed enormous proportions. All over India the Committee heard the complaint that dowry is on the increase, and has penetrated communities and regions which did not practise it earlier. Its extent depends on the socio-economic status of the bridegroom and differs in different regions and in different caste groups. There are more or less well-defined grades of dowry for men in different professions. For example, men in the I.A.S. and I.F.S. in Orissa, Bihar Uttar Pradesh and Punjab, belonging to well-to-do communities, can easily expect to get in cash and kind, at least a lakh of rupees. Business executives rank next. Engineers and doctors stand lower than the business executives. This class seems to expect that marriage would bring them not only a partner but also all the things needed to set up a modern household, such as a car, refrigerator, radiogram. These groups serve as pace setters and naturally influence those below. Thus a peon or a clerk would demand such things as a bicycle, a transistor, and a wrist watch. A scooter is a common item of gift to the son-in-law in the groups at the middle level. In villages too, there are similar demands.

3.206 Among Muslims of many regions the custom of giving cash to the bridegroom is prevalent. It is so in Kerala among patrilineal Muslims. In Andhra Pradesh this money is known as "Jode Ka Paisa", i.e., cash given for the bridegroom's outfit. In ordinary middle class families this is settled in thousands. A general understanding is that this money is to be used for the expenses of marriage on the bridegroom's side. It is customary for the

*The following excerpt is taken from *Vivahapaddhati* (with translation and commentary) prepared by Shri Ramaswarup Sharma of Merath :

Marriage with Kanyadan is commonly expressed as *Pun* (religious merit) marriage in the northern states.

37. "According to the Hindu religion no sacrifice is complete without its appropriate Dakshina, so the marriage which is regarded as a kind of sacrifice should be duly finished with a fitting Dakshina in the form of money and presents." Pandey, R. B. Hindu Samskar.

bridegroom to present sets of clothes and jewellery to the bride and give at least one feast after the bride is brought home. Socio-economic status of the families of the bride and the bridegroom and education and earning potential of the bridegroom are important determinants of the amount. In many parts of the country, the bridegroom is given cash after the 'Nikah' ceremony. This is called 'Salami'. The orthodox Christians of Kerala and the Catholics of Mangalore and Goa also have the custom of dowry, and expenses of marriage for both the parties are to be borne by the bride's people. The Christians of Mangalore follow their pre-conversion custom of Kanyadan, and their gift-giving puts heavy pressure on the bride's parents. It is reported that in Kerala the custom of dowry makes marriage near impossible for many Christian girls belonging to large families. They may choose the ecclesiastical line or may leave the State in search of jobs, particularly opting for nursing. Many of them earn their dowry.³⁸

3.207 There is a distinct trend among middle class girls to take up clerical or teaching jobs, nursing, or working as sales girls to earn their dowry in urban areas. The Committee was told about it specifically in Kerala, Orissa, Bihar, Bombay, U. P. and Delhi.³⁹

3.208 Dowry may also be demanded in the form of residential accommodation in places like Bombay and Calcutta. Financial support for foreign education, or for setting up business is not uncommon. In a village near Delhi, we were told that motor cars were in great demand for use as taxis.

3.209 It is a disturbing trend that the girls themselves aspire to have their household set up in a grand style by the parents and to have clothes, jewellery, furniture and vehicle, etc. This is supposed to enhance the girl's status in the in-laws' family. There is some truth in it for she has to face comparisons of gifts received by the brothers of her husband on the occasion of their marriages. A daughter-in-law's treatment is also related to the amount of dowry she has brought. This trend is spreading even among those who have not had the practice of dowry.

3.210 Desire for ostentation and sense of prestige and status have contributed to an increase in wedding expenses incurred by the parents. This works both ways; the parents of the girl try to excel in ostentation and the boy's party also make fantastic demands. The Committee encountered a most ridiculous situation close to the capital city of India in which the bride's parents had to spend thousands of rupees to satisfy the demand of the bridegroom's party that a helicopter must be arranged for them to come to the wedding.

3.211 Both in villages as well as towns parents offer certain justifications for demanding and accepting dowry. First, since they have to give dowry for the daughters, they are in a way forced to ask for dowry for their sons. Second, the fathers of educated boys like to get back the amount they spent on the son's education. Some also argue that because of changed circumstances in which a son generally has a separate establishment and has a job somewhere away from home, the parents cannot expect much help from him, and so they consider his marriage as the major occasion on which their investment in his education can be recovered.

3.212 It is disconcerting to find that education has hardly had any liberalising influence on the minds of the people in respect of dowry. On the contrary education increased dowry both in rural as well as in urban areas. An educated boy, and more so one whose education and specialised training have helped him in acquiring a lucrative source of earning in life, expects a higher amount of dowry. The girl's parents want to buy a good future for their daughters. It is often possible in some of these cases to delink the boy's parents' socio-economic status from the boy's status, and parents of girls compete among themselves for such a boy.

3.213 Education of girls also increase dowry, though indirectly. An educated girl aspires to marry some one who is better qualified; her parents also have similar aspirations. There is hesitation on the part of young men to marry better educated girls. In fact this is a common expectation in an arranged marriage that a boy should be better qualified than a girl. Thus, the more educated a girl is, the more qualified a husband does she need. This necessitates greater

38. In Kerala there are special community marriages in which dowry is given by the Church with the help of donation and expenditure of feasting is taken care of.

39. Shanti Sitaraman reports the case of a girl who was sent to work 'to collect her dowry money. Firstly the target her parents set for her was Rs. 8,000/-, but each year that has been raised by boys' parents. 'Women and Work', Sunday World, May 13, 1973.

dowry. In such situations parents of the girls often feel almost cheated in educating their daughters. Of course, where the girl is allowed to earn and is capable of earning her own dowry, education may be an advantage, but it does not lessen the dowry. Only where a girl has taken up a career or has a permanent job will the boy's people be satisfied with a modest dowry. This clearly indicates the relation of dowry with economic dependence which is associated with women who are principally housewives. Dowry encourages the belief that regards the value of women's work in the home as non-productive.

3.214. Although, in the context of the family, dowry may appear to give a certain status to the woman who is fortunate enough to be able to bring more of it, the custom reflects upon and helps in perpetuating the inferior status of women in the society. In her natal home a girl is considered a liability, and a drain on the family's resources. This has its effect on the socialisation of children. There is traditionally sanctioned discrimination between boys and girls in the family in respect of food, medical care, etc. The enlightened sections may find this unimaginable but its truth cannot be denied. In the sphere of education, the middle classes all over India give more importance to boys' education and whenever a choice has to be made because of scarce resources, it is the boy who is likely to win in preference to girls, irrespective of the relative capabilities of the two. Undoubtedly dowry is a very great impediment in the progress of education of girls.

3.215 The present trend which comprises all kinds of objects of utility, comfort, and luxury (and also of obvious ostentation and false prestige) in dowry, the subtle demands for cash, assurances of 'decent marriage,' and ways of conveying to the boy's people the direct and indirect gains that would accrue to them through a particular match, have all a strong flavour of market transaction. It is difficult to pinpoint what is bought and sold : a secure future and leisure for the daughter ? Or transfer of responsibility of the girl who was hitherto a liability of the parents ? What is more than clear, however, is that girls have to face an extremely unfair competition, in which their own worth is hardly recognised. The prospects of marriage produce considerable strain on the girls during their childhood and adolescence.

3.216 It is interesting to see how the values inculcated in the society operate to perpetuate the evil. A folksong of eastern U. P. says, "Let my daughter be married in a family where she will be swinging on a swing all the time". A rich Reddy girl's stereotyped ambition is that after marriage she should have nothing to do but sit on a comfortable mattress and chew betels. Most certainly these ideas set standards of desirability for others. It is revealing that the Committee during its tour in Rajasthan found that in a girl's college, a few girls who could be counted on the tips of one's fingers looked forward only to a respectable and secure marriage so that they would not need to work for a living. With progressive standardization of life styles and greater communication between groups and communities, the values of a high consumption society, with its false ideas of prestige are influencing other sections also.

3.217 A feature of our society, which is closely related to dowry, is the involvement of man's prestige in the kind of work that the women of his house are required to do. That is how the norms for women of properties and business classes and also those belonging to the official class, incline them to lead an almost parasitic existence. The farmers all over the country have been known to withdraw their women from the fields as soon as they become a little prosperous. Similarly the aspirant middle class in urban areas are tending to withdraw their women from the area of gainful work, as soon as they have a stable source of income.

3.218. Dowry is an all-India phenomenon, but it is possible to identify its differential impact and working. There are some communities and groups (excluding those who follow the custom of paying bride-price) who have been relatively free from the menace of this custom. To give a few examples : most Muslim communities, the non-Catholic Christian groups outside Kerala and the Parsees do not have dowry. The Nagar Brahmins of Gujarat, the Khatri of U.P., and the Mathur Kayasthas did not customarily settle marriage transactions in cash or kind. Several castes in Maharashtra also fall in this category. But today people belonging to these groups are also adopting dowry. It is rampant in the Punjab, U.P., Bihar and Rajasthan and to a lesser degree in Bengal, Orissa, and Madhya Pradesh. Here, as mentioned earlier, the flow of gifts is almost unidirectional. Aggarwals and other Vaishya groups in the Hindi-speaking areas, the Rajputs and the Kayasthas and the landowning castes of Bihar and U.P. practise dowry. Among the Kanyakubja Brahmins, the Rajputs, the Padidars and Anavil Brahmins of Gujarat and other communities, hypergamy has resulted in establishing high rate of dowry. In the South the following groups are known for high

dowries: the Reddis, the Kammas and the Velmas as also the traders and well-to-do Brahmins of Andhra Pradesh; the Naidus, the Brahmins, the Vellalas, the Mudaliars and the Chettiars of Tamilnadu; Brahmins, Vaisyas and some Lingayat groups in Karnataka and the various Christian groups in Kerala. In Bengal all the upper castes practise dowry. Dowry among the Muslims consisted mainly of clothes, jewellery, and articles of household use for the daughter; and the other principal item of expenditure used to be entertainment of the bridegroom's party and celebration of the wedding. In North India and in the princely States marriage of a daughter had always involved substantial expenditure: But now, even among the Muslims dowry is demanded, though it may be in a subtle form. There is in fact no difference now in the pattern and motives for conspicuous consumption and dowry, either religionwise, or castewise:

3.219 Black money and unaccounted earnings have given an impetus to dowry during the post-independence era. A new class of nouveau rich has emerged that buys a daughter's future with dowry, to raise its own social status by entering into marriage alliances with families of high status. These people are keen to get rid of the black money, so they spend it lavishly during weddings. In this process the level of expectations in the marriage market has changed altogether. Men of honest means and moderate income find it extremely difficult to remain honest in order to compete with this class that has a free flow of black money. The Committee received innumerable complaints from common people, who are fully aware of this situation and are also very bitter about it.

3.220 We would like to emphasize that the spirit of dowry and the transactions involved in it, particularly at the upper middle class and upper class levels go against the goal of a socialistic society. Such value patterns of marriage expenses tend to influence other socio-economic groups. It is an undeniable fact that, excepting a few rich, all have to spend beyond their means where dowry is involved. During our visits, women all over the country complained bitterly about the increasing burden of dowry and also told us that many girls had to remain unmarried because of this evil practice. The limited means of the parents and the abnormal demands for dowry impose a great strain on the minds of some young girls. In Orissa some doctors reported to us increasing incidence of nervous break downs in this group. Elsewhere we even heard of some cases of suicide by young girls who were faced with this problem.

3.221 Material considerations like wealth, jobs and professional opportunities have always formed one of the important incentives for marital unions even in countries where marriage is supposed to be based on love. What is deplored in the case of dowry is its compulsive character and material transactions in actual consideration for marriage. We require some concrete measures to do away with this state of affairs. The attack on dowry has to be multipronged. Our measures, though aiming at proximate ends, should take a determined step forward towards an egalitarian society. Social consciousness needs to be aroused particularly amongst women, to enable them to understand that by encouraging dowry they are perpetuating the inequality of the sexes. Reforms in marriage customs to simplify the ceremony, increasing opportunities for employment, condemnation of the ideal of a parasitic existence for women, a reassessment of the value of household work and home-making, as socially and economically productive, and the enforcement of the Anti-dowry Act, are some of the measures necessary to fight the increasing problem of dowry.

3.222 The problem of dowry cannot be solved only by educating the young. Therefore, it is necessary to examine the present law against dowry and do away with the loopholes which have made it totally ineffective. The present law may be regarded as only a proof of growing social awareness about the evil custom of dowry. It is essential that acceptance of money, property, or goods in consideration of marriage be made a cognizable offence. It will then activate social service organisations to take up the cause and pursue infringements of the law.*

3.223 In banning dowry it does not seem feasible to ban gifts for the daughter herself. The present law does not ban it, nor can future law prohibit it totally. This is likely to pose a difficult problem. This issue will have to be tackled at the level of mass education and social pressure. It will be necessary to keep record of things given to the daughter so that they remain her possessions and are not appropriated by the in-laws

3.224. If public display of gifts is banned, it may hold unhealthy competition in check. It will spare the bride's parents much humiliation. This is not a minor issue. In Gujarat it is

* Details of legal measures needed are suggested in Chapter-IV.

common practice to send round invitations to women to see the gifts being given to the bride and her in-laws. In many other areas, though not mentioned in such specific terms, a few occasions for which invitations are sent specifically meant for displaying the dowry. This must arouse strong social censure. We feel that women's organisations can play an active role here.

3.225 Ostentatious celebrations involving enormous expenditure on food, lighting, and entertaining should also be banned. Viewed in terms of national interests, this is a drain on national resources and public amenities which are in short supply. Control over the expenditure on weddings should be viewed as an anti-inflationary measure. Here the interest of women and the nation converge.

3.226 Compulsory registration of marriage for all may gradually lead to simplification of rituals and would help to eliminate occasions for gift giving. Further, it will be easier for the young to break the stranglehold of endogamy. During our tours, many persons, both men and women observed that inter-caste marriage is one of the ways to fight the evil of dowry. For this it is necessary to build up strong public opinion in favour of such marriages. This would naturally go against endogamy and hypergamy wherever it is prevalent, and would lead to raising the women's status by undermining the importance of dowry.

3.227 It is necessary to devise ways and means to make women conscious of the limitations of their self-image. Whether they are transferable assets, as in the case of bride-price, or liabilities whose value has to be enhanced so that they become acceptable, women are demeaned. It is regrettable that women not only concur with but even encourage this practice. It is imperative that programmes of adult education and mass media should be purposefully framed to make the women understand the implications of both dowry and bride-price.

There is also need for a separate machinery to enforce the proper implementation of the legal measures connected with marriage and dowry.

Widowhood

3.228 It is often mentioned that the problem of widow remarriage is the problem only of a section of society. It is necessary to ascertain how large this section is. In the absence of use of caste as a category for the collection of Census data since 1941 onwards, population figures for 1931 Census have been used to obtain some idea of the proportion of Hindu population which traditionally did not practise remarriage of widows*. Population of these castes was added together and its percentage to the total Hindu population in 1931 worked out. This is only an approximation. Our calculations show that at least 13.9% of the Hindu population in 1931 did not customarily practise widow re-marriage. This percentage is enough proof that the problem does not concern the whole of the Hindu society. But if we have a look at absolute figures (33256068) and think of the rate of population growth since 1931, it certainly does not appear to be an insignificant problem.

3.229 Furthermore, it is these groups who have served as reference groups for society, and have also been instrumental in bringing about legal reforms which are to affect the whole society. One example should suffice to bring this point home. There is enough evidence to tell us that only an infinitesimal number of widows in the general population were immolating themselves, that outside ruling and priestly families the custom did not have a wide appeal.⁴⁰ But in certain parts of the country reverence is shown for women who committed sati in the past. Commemoration stones of these acts can still be found in some regions. Newly married couples are sometimes taken to the sati stone to show reverence and obtain blessings.

3.230 Even among those who allow widow remarriage, many groups do not look upon it favourably. At the most it is accepted as a solution of the problem of maintenance of a widow. Among 'high class' Muslims also widow remarriage is frowned upon.

3.231 According to 1951 census there were 22 million widows i. e. 123 widows per 1000 females. According to 1961 census 10.8% of total female population consisted of widows as opposed to 3.70% widowers. The Census 1971 recorded 8 million widowers as against 23 million widows.

* A list of castes and caste groups which customarily did not approve of remarriage was prepared on the basis of accounts of castes in volumes on customs and traditions, and microstudies in various parts of India.

40. Altekar, A. S. *The Position of Women in Hindu Civilisation* (1938) p. 162-64

(a) *Percentage of Widowed Persons, 1971.*

<i>Age Group</i>	<i>Males Females</i>	<i>Rural</i>	<i>Urban</i>	<i>Total</i>
All ages	Males	3.2	1.9	2.9
	Females	7.9	8.9	8.7
0—9		—	—	—
10—14	M	0.03	0.02	0.03
	F	0.07	0.03	0.06
15—19	M	0.18	0.05	0.15
	F	0.37	0.23	0.33
20—24	M	0.74	0.31	0.63
	F	0.95	0.71	0.90
25—29	M	1.40	0.69	1.23
	F	1.94	1.51	1.85
30—34	M	2.35	1.26	2.09
	F	4.06	3.46	3.95
35—39	M	3.09	1.63	2.77
	F	7.17	6.25	8.68
40—44	M	5.03	2.90	4.57
	F	14.34	13.46	14.18
45—49	M	6.45	3.94	5.92
	F	20.31	20.93	20.42
50—54	M	10.42	6.67	9.70
	F	36.28	37.73	36.53
55—59	M	12.50	9.07	11.87
	F	40.52	43.72	41.06
60—64	M	18.12	14.69	17.54
	F	62.21	63.98	62.50

Source : Census of India 1971 Series 1—India Part II Special

(b) *Age-group wise proportion of Widows to widowers.*

<i>Age Group</i>	<i>Males per 100 females</i>
All ages	36
10—14	60
15—19	52
20—24	69
25—29	65
30—34	54
35—39	43
40—44	37
45—49	35
50—54	31
55—59	33
60—64	30

Source : Census of India 1971 Series 1—India Part II Special.

3.232 This proportion has not changed drastically in 1971 Census. The two tables given above make this clear. Presence of children is a positive deterrent to remarriage of mothers, particularly after they have crossed the age of 35 or 40. The fear of losing the children and not being able to have them with her is very real for a woman, and this applies to all women⁴¹ except those in matrilineal communities.

41. Practice of marrying deceased husband's brother is a partial solution of this difficulty.

3.233 The condition of widows in our country may be examined from two angles : social and economic. These two are inter-related and are often indistinguishable from one another. Social attitude towards widows differs at different socio-economic levels in regard to details.

3.234 A change in the life style of women after they are widowed is characteristic of Indian society, though there are regional and group variations at different socio-economic levels. Restrictions imposed on Hindu widows have been mentioned earlier.⁴² It should be emphasised here that with the conception of man as the breadwinner and the woman as his dependent, the married state for a woman is considered fortunate and conversely widowhood is associated with great misfortune. Life long mourning is imposed on them. The signs of the married state⁴³ have to be removed from the person of the widow. In many communities this process is made specially painful. It emphasises that her existence has been rendered worthless by the death of the husband. The Muslims of respectable families also follow regional practices of making a widow distinguishable. Other religious groups follow this behaviour pattern in different degrees.

3.235 An important purpose of these restrictions on a widow is to make her unattractive. Reactions of the respondents in our survey to a question as to whether a young widow should be required to change her mode of dress are revealing. Combining partial and full approval we find that 59.52% Hindus approve of such a change, whereas 61.49% Muslims, 62.16% Jains and 52.94% Parsees fall in this category. Though low in comparison to the above groups, the percentage of Christians (44.21%) approving of such a change is not negligible. Only 30% of the Sikhs expressed the same opinion. This low percentage among the Sikhs may be due to the fact that most respondents belonged to Chandigarh which is a highly modernised city. The lowest percentage is among the tribals, 27.78%. Even today the social norm is that a widow should look different from a married woman in every manner. Even in educated circles deviation from this norm on the part of a widow is commented upon.

3.236 Association of inauspiciousness with widowhood still continues. Widows themselves avoid taking an active part in ceremonial occasions. For instance, among the Bohras a widowed mother would not break the coconut for her son's birthday. Responses to our question indicate that there is some disapproval of widow's participation in auspicious ceremonies. As many as 23.41% Hindus disapprove of such participation while 10.14% do so only partially. Over 22% Jains, 13.13% Muslims and 16.33% Christians disapprove of widows participation. As against 58.87% Hindus who approve, there are 71.94% Muslims, 71.88% Christians and 88.24% Parsees who approve such participation.

3.237 A very interesting pattern is seen in the response according to caste groups : the percentage of upper caste Hindus approving of widows' participation is the highest (63.45%), next come the middle caste Hindu (60.43%), then the lower caste Hindu (58.28%) and last came the scheduled castes (50.66%).

3.238 Thus it appears that the distinction between a married and a widowed woman is kept more alive at the lower social levels; in fact there are definite ritual occasions in which widowed women are debarred from participating. However, these women, if young, are expected to remarry. Among Muslims if a son dies during the life time of his father, then his widow does not get any share of the property.

3.239 It is regrettable that though the condition of widows in our society caused such serious concern to the social reformers, and the widow Remarriage Act was passed as early as 1856, society's attitude to this unfortunate group has not registered any appreciable change in all these decades. Immolation may have stopped, and cases of remarriage of child widows may have increased, but by and large, the condition of widows continues to be a blot on our society. The large group of widows, of all ages, whom we met in Banaras, were in a state of destitution. Many of them had children. Only a few had any visible means of economic support. Allowances from the family were either negligible or non-existent. In the absence of any employable skills, most of them were depending on petty trades like making paper bags, packets of incense, selling pakoras etc., earning an average income of Rs. 15 to 20 per month. Some joined 'bhajan mandalies' and earned about 37 paise in an evening and even that was not a regular income. Some were reduced to absolute beggary.

42. Vide section on religious traditions.

43. These vary from region to region. Glass bangles and vermilion in the parting of the hair, kumkum on the forehead, and string of black beads, nose ring, particular type of ear ornaments, bangles of elephant tusk, toe-rings, anklets are some important signs belonging to different regions. Jains & Muslims also wear some of these signs.

3.240 The widows' scheme, adopted by the U. P. State, provides a small pension. According to the District Officer, only about 10% of the recommended cases have received this pension. In their discussion with us, these women stated that though their lives were finished, neither they nor society had provided any protection or security for their children, whose future looked no less bleak than the present. We were informed by a member of the Gandhian Institute of Studies that some teenage daughters of these widows were employed as compositors by some of the small presses in Banaras. They were mostly illiterate, and had to do their work by recognising letters without being able to read, which imposed tremendous strain on their eyes. He described their expressions as 'sightless' and 'vacant'.

3.241 Many of these widows had been sent by their families but family ties with brothers, sons or in-laws had gradually become tenuous. Some even said that they had run away, to escape from ill-treatment by relatives. The very old ones, no longer able to look after themselves, were preys to cheats. When they fell sick, the only care they could get was from some neighbours belonging to the same group—who are in no position to look after others. Some of the worst cases are left before the Ramakrishna Mission Old People's Home. The latter, being overfull, has stopped further admissions, hence even this avenue for care of these old and destitute women, has now closed.

3.242 According to the Gandhian Institute, which conducted a small investigation, there are approximately 5000 destitute⁴⁴ or semi-destitute widows in the city of Banaras. Majority of them come from Bengal but some were also from South India and Maharashtra. We have recorded our impressions of this group as a symbol of the status that our society allots to widows.

3.243 For those who have any property, however, legal reform securing the right of widows to a share of the husband's property has improved the condition considerably. The decision of the Government to provide family pensions to widows of government servants for their life time, with additional allowances for children during their minority has also guaranteed a degree of security.

Age at Marriage

3.244 Although the last few decades record a distinct rise in the mean age of marriage for women in India, the problem continues to be serious as is evident from the percentage of married persons (which would also include widowed persons) even in the age groups 10—14 and 15—19.

TABLE :

The percentage distribution of ever married persons according to sex and age 1961 and 1971.

Age group	Rural				Urban			
	Male	Female 1971	Male	Female 1961	Male	Female 1971	Male	Female 1961
10—14	5.31	13.79	7.92	22.37	1.50	4.21	2.04	6.99
15—19	21.06	63.09	43.50	85.80	7.38	36.24	26.90	70.60
20—24	55.91	93.78	60.75	95.54	32.78	80.90	41.08	87.28

3.245 In rural areas in the 10—14 age-group, 13.79% girls are already married, while in the 15—19 age group, 63.9% are married. In urban areas this percentage is much less : 4.21 in the age group 10—14 and 36.26 in the 15—19 age group. According to another source, in the 12.5—17.5 age group, 45.21% girls are married as compared to 13.29% boys⁴⁵.

3.246 One redeeming feature of child marriage in India is that customarily the consummation of marriage takes place after the girl reaches puberty. It may be noted, however, that

44. No proper survey has been conducted but unofficial figures are upto 20,000 such destitute widows in the city of Banaras alone.

45. Kumudini Dandekar : "Age at Marriage of Women" paper prepared for the Committee.

this age does not necessarily tally with the legal minimum age of marriage. The magnitude of this phenomenon is not easy to measure for the simple reason that people are not able to report the correct age in the Census.

3.247 Low age of marriage is related with the near-universality of marriage in India. In a sense marriage is not an individual decision but a cultural one. Only 0.5% women never marry. Since all girls have to be married off, the thought of their marriage has to be entertained from their birth or early childhood. Early marriage is accompanied by seemingly easy solutions for a number of problems. Rules of endogamy which prescribe that marriage should be arranged within a certain group, and other norms of prescription, preference and proscription (such as close kin marriages, gotra, clan and village exogamy, and marriage within one's class) are best taken care of in the case of early marriage. Leaving the girl to decide when to marry may also mean her deciding whom to marry and her choice may not conform to the traditional norms and rules. Betrothals and early marriages are encouraged towards this end.

3.248 Closely connected with the concern for maintenance of group boundaries, is the desire to preserve the purity of women. The biological facts of gestation and lactation make repudiation of motherhood next to impossible. The emphasis on the purity of women springs from this. Chastity gets strong emphasis among Muslims also and with emphasis on purity of blood, early marriage appears to be the best solution, particularly for those who do not keep their women secluded. This concern for the purity of women was reflected in the compulsion of pre-puberty marriage among the Brahmins; for whom its violation resulted in ostracism. A father who could not get his daughter married before puberty was believed to commit a grave sin. In spite of strong opposition to early marriage from the reformers, it remained popular till the twenties of the present century. Because of the ban on widow remarriage among the upper groups, early marriage was nothing less than a curse. Although not as low as among the Brahmins, age of marriage among the Kshatriya castes and trading castes was also fairly low. This is made clear by the following table presenting the mean age at marriage for the four groups: the Brahmin, the Kshatriya, the trading castes, and the Scheduled Castes.

TABLE :
The Mean Age at Marriage of Census Synthetic Cohorts : India and Selected States Average for 1901-1931.

	<i>Brahmin Caste</i>		<i>Warrior Caste</i>		<i>Trading Caste</i>		<i>Scheduled Caste</i>	
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
Assam	23.47	12.15	—	—	—	—	24.65	11.90
Bengal	21.53	12.16	—	—	19.92	12.51	18.46	11.20
Bihar & Orissa	19.57	11.77	21.10	13.24	21.32	14.30	13.81	11.14
Bombay	21.59	12.58	20.79	12.31	20.57	13.78	16.59	10.21
Hyderabad	17.06	11.82	16.96	11.45	—	—	15.90	12.30
Madhya Bharat	17.54	12.13	17.39	13.26	16.12	12.64	—	—
Madhya Pradesh	20.50	12.48	17.15	11.73	18.60	11.73	14.93	10.38
Madras	20.73	12.33	—	—	22.21	16.61	22.25	15.67
Mysore	22.00	12.12	25.31	14.82	22.36	12.70	24.37	16.42
Punjab	21.79	14.59	25.12	13.81	20.38	14.51	17.99	12.24
Rajputana	20.12	13.12	22.73	13.56	19.47	13.57	17.10	12.76
Uttar Pradesh	18.06	13.48	18.92	13.20	18.14	12.84	17.58	12.77
Travancore Cochin	22.43	15.63	28.32	17.22	23.20	16.62	23.82	18.76
All-India (un-weighted average of reporting States).	20.49	12.80	21.38	13.46	20.21	13.80	18.95	12.98

Sources : Census of India, 1901, Vol. I, Part II, pp. 353-366 : Census of India, 1911, Vol. I, Part II, pp. 242-283 : Census of India, 1921, Vol. I, Part II, pp. 108-167; Census of India, 1931, Vol. I, Part II, pp. 160-181 From Aggarwala, S. N. *Age at Marriage in India* (1962) p. 176

3.249 It is striking that among the Brahmin and the Scheduled Castes, the age of marriage was the lowest. As pointed out earlier, since 1931, there has been a gradual but distinct rise in the age of marriage, specially among middle and upper classes in the urban areas but the rise is not so noticeable among the Scheduled Castes.

3.250 Census has stopped collecting data for marital status of girls below the age of 10. Therefore, it is not possible to know of the incidents of child marriage between the ages of 0 to 10 years. But in our tours, we came across a number of children below the age of ten, who were already married. We were also informed of marriages where the bride had to be placed on a thali. In a village in Darbhanga, we saw a girl of three in a Balwadi, wearing sindhur mark. (In a factory in Indore that we visited, a baby of 18 months in a creche was already married).

3.251 One of the important factors connected with early marriage is that onset of puberty is regarded as the right age for marriage, as the girl is considered ready for maternity.⁴⁶ The notion that a girl can be married with proper rites only when she is a virgin is also an important factor behind early marriage. Thus, for those, whose girls cannot be confined to the house as they have to share in the work outside, early marriage is necessary in order to ensure their reputation and protect them from motherhood before marriage. This association between relatively free movement of girls, and early marriage is fairly clear. Some social scientists have related the continuance of the custom of early marriage among Scheduled Castes with their helplessness in protecting their women from the lust of men of upper groups who have economic power over them.⁴⁷

3.252 Scarce resources also constitute an important reason for early marriage. Since the girls do not support the family, the responsibility in respect of them is transferred to another family as early as possible. Another reason given for early marriage is to enable the proper adjustment of girls in their conjugal family.

3.253 Though not the only factor, low age of marriage is responsible for population growth, low standard of health of women, and high mortality in the child-bearing age. It is essential to take strong action in this regard. Compulsory registration of marriage would never help to curb the evil of child marriages.⁴⁸

3.254 Early marriage and lack of education constitute a vicious circle. A determined effort will have to be made to educate the girls in rural areas, and those from lower socio-economic groups in urban areas, if the age of marriage of girls is to be raised. Education of both boys and girls will inevitably contribute to raising the age of marriage. An important measure will be to educate the people so that they learn to delink onset of puberty with preparedness for maternity.

3.255 In urban areas and for the well-to-do in rural areas education and the need for employment of boys has raised the age of marriage and this has contributed substantially to the raising of age of marriage for girls. Thus education of girls is both a cause and an effect of raising of age of marriage.

3.256 In studies of attitudes⁴⁹ regarding age of marriage which were conducted mainly in educated urban middle and upper classes, the desirable age suggested for the marriage of girls broadly ranges from 16 to 24.

3.257 Child marriages do not pose such a problem among the tribes. Among the hill tribes, few girls are married before 15. Only a few tribes like the Bhumia, Mahalis, Omatyas, Bajuras, Tharuas, some Koyas and some sections of Gonds practise child marriage. Banjaras held the betrothal early but do not marry their girls before the age of thirteen which is the age allowed by their Panchayat⁵⁰. Marriage immediately after puberty is fairly common and among many tribes of Central and Western India in fact the onset of puberty is associated with maturity among the tribes also.

46. This was also the notion inherent in the Brahmin's preference for pre-puberty marriage and the charge that each menstrual cycle of the daughter burdened that father with the sin of infanticide.

47. Das, V. "Status of Women in Relation to the Institution of Kinship and Marriage" Paper prepared for the Committee.

48. Vide *Infra* Chapter IV. para 4.070

49. Desai, Neera "Survey Report on Roles and Attitudes to Women"—paper prepared for the Committee.

50. Jadhav, C. G., and Bannerjee, N. K., : "Tribal Marriage Institutions in India".—paper prepared for the Committee.

Customary Marriages :

3.258 While marriages among the dominant higher castes are performed by ritual ceremonies, since marriage is recognised as a sacrament, there have always been various forms of customary marriages practised by other castes, which do not involve any rituals, but are based on simple practices. These marriages are fully accepted by the community. Throughout the Himalayan tract, Jhajra, which means putting a ring in the bride's nose is the customary form of marriage. In the trans-Giri territory of Simur, regular marriage is termed Jhajrath. Earlier, marriage according to Hindu rites was unknown, but now the well-to-do and respectable Kanet and Bhat families have adopted them. In Maharashtra, the poor people practise Mohutur, which is a shortened form of marriage, not as sacred but a completely legal union. In some parts of Madhya Pradesh, if an unmarried girl elopes she may be married only by a simple ceremony which is used for secondary marriages. In Manipur, however, cases of elopement, which are then followed by a proper ceremonial marriage, are of frequent occurrence, and not disapproved by the Community. These are only illustrations of various forms of customary marriage.

3.259 Customary marriages are normally coterminous with easy forms of divorce, and secondary marriages. Secondary marriage of a widow or a separated or divorced woman is accompanied by a nominal ceremony, mostly signifying the renewal of the "married" state for the woman. Depending on the region, the gifts by the man consist of things like glass bangles, vermilion, nose ring etc. A feast announces and accords social approval to the union. But often the union may start with the man bringing the woman to live with him or the woman entering his house and starting to live with him. Feast and ceremony may follow much later.

3.260 Where a woman leaves one man and goes to another, payment of compensation to the previous husband may be said to be characteristic of the majority of those castes, among whom secondary union is permitted. In many areas there is no formal divorce; when a woman goes to live with another man, who is willing to pay compensation for her to the previous husband, and a fine and feast to the caste or village, the union is recognised.

3.261 It has been brought to our notice that in some of these cases, where a compensation has to be paid by the new husband, the woman's decision is not always voluntary. We were told in Himachal Pradesh that in the Reet form of marriage while the former husband must consent to the remarriage of his wife to another man, the wife's consent to this exchange is not essential. There have been cases where she is compelled by the former husband or by her father as the case may be. The women who met us, both in urban and rural areas, were outspoken in their criticism of this practice. Similar cases of compulsion have been reported from Madhya Pradesh.

3.262 The tribals are governed by the customs of marriage and divorce of their respective tribes. In the case of primary marriages most tribes have a preference for marriage by negotiation, but there are also provisions to accommodate unions which are established by elopement. We were told by members of the Wanchoo tribe in Arunachal Pradesh that though negotiation is preferred, if a girl is emphatic in her refusal to accept the groom chosen by her family, then her decision is accepted. We believe this is common among most tribes. A popular custom in the tribes of the plains is to get a boy to serve and help the girl's household for a few years to earn his bride. It is in the subsequent unions that individual choice gets exercised. Going to live with another man, who pays a compensation to the previous husband, is equivalent to divorce and remarriage. There is considerable variation in customs regarding marriage and divorce among the tribals, but an examination clearly indicates that the two partners are not at par with each other. There is compensation for the loss of woman, and the mother has to leave her children behind. There is, however, no stigma on divorce and remarriage. The average age of marriage is also higher among tribals, and no marriage takes place before puberty.

A. Role Differentiation

III Changing Milieu and Roles of Women

3.263 While granting equality of rights to men and women in the polity, Indian society implicitly accepts a sharp distinction between men's spheres and women's spheres and between masculine roles and feminine roles. Realisation of true parity between the sexes granted by the Constitution will be possible only when conceptions and attitudes of the people are brought at par with it.

3.264 An overview of masculine and feminine spheres and roles in our society suggests that the inventory of activities considered proper for women and expected of them is not uniform all over India. Some basic notions about male and female roles, however, appear to be common.

3.265 Women is primarily associated with the home and man with the outside world. As home-makers women are expected to look after domestic chores, such as cooking and serving food, processing and storage of food, and cleaning the house. Woman's contribution to productive activities or to actual earnings of the family varies at different socio-economic levels and in different regions. Thus women, whether they work in the fields, factories or mines, or work at construction sites, or those who are engaged in household industries, or in white collar jobs, all of them are expected to be home makers along with those who confine themselves exclusively to home-making activities. Housewives and mothers are the feminine roles. In the cultural understanding of the people, home-making like child bearing and also child rearing cannot be distinguished from femininity. In other words these are sex-linked roles for women.

3.266 According to convention, participation in decision making for the community and the exercise of political power is regarded exclusively as the man's sphere. This is clear from the entirely male composition of the traditional Panchayats, either of villages or of caste groups including caste like groups among Muslims.

3.267 By and large manual work for one's own house is to be done by women, as they are considered derogatory for men. They may perform them only under special circumstances, for instance men may cook when women are disabled by illness or confinement. For community feasts cooking by men from within the group is a common feature at the lower socio-economic levels. Cooking, tailoring or sewing can be taken up as a vocation by men. Thus suitability of women for these tasks appears to be a myth.

3.268 Broad regional patterns which show that there is no uniformity in the type and quantum of work expected of women also point towards this. What a woman does in one society or region is often dubbed as non-feminine in another. Weaving is the monopoly of woman in the North-Eastern Hill areas, whereas in the lower parts of Himachal Pradesh it is a male activity. In Maharashtra and parts of South India it is done by men and women together and woman is an indispensable assistant. Phulkari work of the Punjab is a women's craft whereas embroidery in Kashmir is done only by men.

3.269 In agricultural activities there are significant regional differences in the parts played by men and women. It is generally stated that men are supposed to do the heavier work. This is a supposition or belief which is not borne out by facts or by a cross regional survey of India. Men's tasks are not necessarily more arduous. What is more important is that men do work which is considered more prestigious. Ploughing, sewing in many parts and all the work of transportation by bullock-cart and large-scale marketing of produce are the domain of men. In the hills, women's contribution to the economy is distinctly higher than that of men, in addition to house-hold work which is very heavy, for example, bringing water from far off places, keeping a vigil throughout the night to scare the wild animal away. "In Bashahr, Chamba and Mandi women help their mates in wood-chopping. While men fell the trees women slice the timber. They carry the timber on their backs from the place where it is sawed to the place from where it is to be floated down the river. They have been seen carrying logs weighing anywhere between 200 to 300 pounds with perfect ease and equanimity."⁵¹ These are the unpaid family workers of rural India.

3.270 In the middle class (which constitutes an extremely amorphous category) the spheres of men and women are more sharply defined. Ordinarily all the work that women do is viewed collectively as being an important component of feminine roles and it is not forgotten that they are being performed by those who have a certain identity in the context of the family, i.e. as mother, as wife, as sister, and so on. Since women are mostly confined to the domestic sphere, their work falls into entirely different sectors. Where the family business consists of grocery, knitwear, embroidery, snacks, and other things which can be made at home, women are the main workers behind the scene. These are the unpaid family workers who may not be returned in the census under the category of workers. Most of the work that women do in the domestic set up is semi-skilled. There is a clear differentiation between work done for one's own house-hold and that done for others, so the question

51. Parmar, V. S.—Polyandry in the Himalayas, 1975 (forthcoming)

of doing this category of work for others does not arise. It is only in unfortunate circumstances that women of middle classes, who have no other qualifications and skills, may be forced to do these jobs as a means of earning a livelihood; crafts like knitting, tailoring and embroidery are in some cases adopted by women to make small personal earnings, sometimes without the knowledge of husbands. Ideas of personal and family prestige are strong at this level; people take pride in the fact that their women do not go out to work for others.

3.271 This traditional concept of a women's role is gradually changing as girls have started taking up white collar jobs. In some families, the earnings of the girl are set aside for providing her dowry and marriage expenses but gradually, the inhibition of the parents to be supported by the earnings of a daughter is also breaking down. There are extreme cases of parents not wanting the daughter to get married, as it would deprive them of her earnings.

3.272 Amongst the well-to-do also the spheres of men and women are well-defined and separate. With domestic help, the burden of drudgery does not fall on the women, but she is still expected to run the home and bring up the children. Her precise activities would depend upon a rural or urban setting, level of education norms of segregation and seclusion, notions of purity and pollution. Home making is raised to a fine art and trifling details assume exaggerated importance, but even here there is insistence on a role-differentiation, according to conventions.

3.273 On the question intended to evoke responses⁵² on the pattern of division of labour by sex in the family, 84.1% respondents said that cooking is entirely a woman's job; only 3.84% said that it is shared equally. As for sweeping and cleaning the house only 3.94% said that the work is equally shared and only 2.14% said that the work of cleaning the utensils is equally shared. These two activities were undertaken only or mainly by men in less than 1% cases. Washing of clothes is shared by men to some extent. In comparison to this, only 50.74% respondents said that care of children was in the hands of women, either entirely or mainly, 28.90% said it was shared equally, and 10.05% said that men did it entirely. Sharing in decision making about the household expenditure reveals a different pattern. Only in 28.18% cases, expenditure on food was decided entirely by women. Decision making seems to have been largely shared (48.48%) by men and women. In 33.96% cases decision about expenditure on education is entirely in the hands of men, as compared to 9.66% cases in which it is entirely in the hands of women. Responses clearly indicate a pattern in which, besides equal sharing in decision making, more women take decisions about the kitchen, other domestic matters and matters concerning the future of the daughters. More men exercise their judgement regarding choice of school, type of education and job the son should take. As is to be expected various sociological and anthropological studies of village and of urban localities and communities clearly point towards male and female spheres of activity. For example, in Gore's sample of Aggarwal families in and around Delhi, women were expected to remain at home and look after the kitchen. 80% of the women were busy exclusively with household work. They did not handle the money. Desai's findings based on the replies given by 369 married women students tell us that a majority of men did not share the household work. A study of 500 college students of Jhansi brings out a sharp contrast between the daily routine of boys and girls, between the restrictions on girls and relative freedom of movement for boys and between the range of exposure to the outside world and to their travel.⁵³

3.274 Notions of distinctiveness between the spheres of men and women, patterns of division of labour, and expectations of differential behaviour between the sexes have a direct bearing on the process of socialisation, on opportunities provided for the education and training of girls, on the kinds of ideals projected before them, on the kinds of expectations they come to have from life, and on the way they conduct their lives.

52. Vide Appendix I.

53. Gore, M. S. *Urbanisation and Family Change* (1960), Sample: 499 families :

Desai, Neera : (Co-ordinator) *Socio-Economic Background of Married Women Students of the University and their Educational Problems* (1969) Mimeographed Sample: 369;

Saksena, Gargi : *Social Background, Values and Attitudes of College Students in Jhansi Ph. D. Thesis University of Saugar, 1972, Sample : 500*

- 3.275 In the process of preparation for adult roles the spheres are distinct. However, amongst the enlightened sections this distinction may not be emphasised, but even here feminine tasks and over all abilities are assumed to be different. A girl has to be prepared for feminine roles as conceived by the stratum to which she belongs. Parents also have to take note of the attitude of the world outside the home, and special protection is needed for girls.
- 3.276 In the middle classes, distinction between femininity and masculinity gets crystallized for the children in the pattern of domestic responsibilities, distribution of financial resources, and planning for the future. Domestic work is the domain of women and in very few families are boys asked to share it. They may be asked to lend a helping hand in marketing and running errands, bringing medicine, and escorting sisters, but household chores are beneath their dignity. Boys interested in cooking, knitting, or embroidery hardly ever get any encouragement from the family members, instead they are often ridiculed and discouraged.
- 3.277 Girls are sent to school but they are not sufficiently motivated to achieve excellence; neglect of studies and lack of interest is easily condoned. Very few parents visualize a career for daughters. Their main interest lies in finding a good match for them. Still many parents view education as a security measure for unforeseen eventualities. Even where school or college performance is praised, lack of interest in household work is not condoned. Girls have to live a constricted life. In allocation of scarce resources, a daughter's education is often the first casualty. Parents are not inclined to undergo the inconveniences and strains involved in giving proper facilities to the daughter for better performance. At this level also girls may have to drop out because of family circumstances such as mother's illness or death. Attending functions like weddings and other ceremonies are considered more important than a daughter's education.
- 3.278 In the middle class families there is a premium on boys' education for it is essential to enable him to get a job. Parents are ready to make all kinds of sacrifices for the education of boys. Despite all the misgivings of modern times, they still hope that their efforts will bring them comfort in old age. Various sociological studies clearly bring out the fact that if the family does not have enough resources, even if the girl is brighter her brother will be sent for higher education and she will be told that ultimately she has to mind the kitchen. In fact, what is not always stated in so many words is the culturally determined attitude, that conservative parents cannot and should not depend upon a daughter for support.
- 3.279 It is necessary to note the effects of this emphasis on feminine roles on the development of personality and identity formation for girls. Girls receive informal education for roles which they are expected to perform in adult life. Many give up their ambition to take up career as these are regarded as incompatible with smooth and peaceful family life. They learn early in life that from a woman society expects greater flexibility of mind, capacity to adjust, and submissiveness. In respect of ideologies and values, girls feel that it is no use their committing themselves to any particular ideology because they may not be allowed to adhere to it after getting married.
- 3.280 Thus the constraints, visible as well as invisible, that are placed on girls have an effect on their personalities. Some of these girls join the work force of the country as white collar workers, in professions and take up careers like politics. This is either before marriage or after marriage. When married women work outside the home they encounter problems of harmonising their two roles. They have to evolve a pattern in which they can play the two roles satisfactorily.
- 3.281 At the relatively lower economic levels, both in the rural and urban sections, girls start their contribution to the running of the household much earlier than boys. They take care of the younger siblings, help the mother in various domestic chores, and also participate in work of production which falls in the feminine sphere, or activities which fetch some income.
- 3.282 Both as preparation for adult roles and as a contribution to the work of the household, the girls' share is important. It is depressing to find that a fairly large proportion of girls are still out of school. In the rural areas there is a lurking fear that education makes girls less useful for adult feminine roles. If they get a little education they develop a distaste for the kind of work expected of them in the village and aspire to get married in towns. In fact, this problem is very real for the cultivators and artisans. It was voiced before the Committee

in very strong words in Himachal Pradesh and in Andhra Pradesh. Education does alienate its recipients from their environment and creates a distaste for manual work.

B. Home and Work :

3.283 In a discussion of the dual role of women we may first take note of the quantum of labour, both domestic and extradomestic. In the rural areas, even those who are confined in the home, because of purdah or other norms of respectability, contribute hard labour in activities such as dairying, processing and storage of grains and other food-stuffs, spinning, coir making, preparation of cowdung manure, and so forth. It has been seen that a woman's direct contribution to the family economy and her actual control over many of the products gives her considerable power and initiative. Their economic value to the family and their own capacity to earn a living frees them particularly from rigid family controls, and bestows on them a certain measure of autonomy. In contrast the lower middle class women of urban areas, who have little education and no independent source of income, are in a less advantageous position because of stricter norms of behaviour and almost total dependence on men.

3.284 In the social context, due to the low status attached to manual labour in our society and the cultural value associated with women's confinement to home, the work of rural and urban women as wage labourers, unskilled factory workers and menials is not conducive to a better status.

3.285 The average woman in rural areas can give little attention to the bringing up of her children. With dual roles and without any mechanical aids for house-work, she is really overworked. So also are the women engaged in unskilled or semi-skilled work in organised and unorganised sectors in urban areas. Overwork, more than a culturally acquired attitude of unconcern about public affairs, is responsible for the limited participation of women in activities like those of the Trade Unions or political parties. They may become vocal and assertive only when non-availability of essential commodities, or escalating prices threaten to upset their household routine.

3.286 It is necessary to assess the status of housewives of the middle and upper economic strata belonging to the urban areas, and also the urbanised rural families. Closely allied to this is the appraisal of the gains achieved in terms of status, by the women who have joined the work force in white collar professions. The Reform Movements for the education of women in the late nineteenth and early twentieth century, along with the realisation of the need for a measure of economic independence⁵⁴ towards the late twenties and thirties of this century, helped to improve the position of women of this class to a large extent. The passing of the Hindu Women's Right to Property Acts of 1929 and 1937 was an important measure to give widows some economic independence. Later, organised efforts were made to provide remunerative work to such women. As the number of helpless women with education upto higher secondary or graduation is increasing, need for work which suit their earlier status and which they can take up only after a brief training is also increasing. Desertion and widowhood in this class often result in a sharp fall in the composite social status of the woman.

3.287 Initially society accepted a widow's gainful employment and gradually a young unmarried girl's employment till she got married received approval. After 1940, the Second World War gave an impetus to women's employment and even married women came forward to take up gainful employment. In the post-independence period, the structure of opportunities expanded, education qualified more and more women for a variety of jobs, and economic compulsions increased.

3.288 The socio-cultural environment of India has changed rapidly in the last five decades, especially in the quarter century after the attainment of India's independence. Forces of modernization continue to make a powerful impact and the society has to respond to the new needs and urges of the people. Mahatma Gandhi and other leaders who combined in them the roles of social reformers and political leaders projected the vision of a new society: the humble and the oppressed were to get a new deal and the women were to secure a measure of emancipation in the society visualised by them. It is true that their philosophy and action did not bring about an instant transformation in social attitudes towards the women but it did nevertheless have a powerful effect, and over the decades legitimized

54. This is clearly indicated in the content analyses of newspapers and magazines in Gujarati and Marathi languages prepared for the Committee by Harshida Pandit and Sudha Gorgate respectively.

many of the new roles contemplated for women. A series of powerful forces are in operation today to bring about perceptible changes in the social milieu. Education, with all its inadequacies, has made a definite impact. It opens up an arena in which women can compete freely with men and prove themselves. It also creates for them new avenues in the competitive employment market. The mass media, especially the films and radio, despite their faulty conceptualization and constricted reach have contributed towards refashioning social images and goals. The most significant impetus to change has been provided, however, by demographic pressures and economic compulsions. These have been responsible for women seeking to take advantage of the new structure of economic opportunities. Politicization and articulation of new ideologies has acquired a new meaning and a heightened significance in the changing economic context. In consequence, the legitimacy of the new roles for women is increasingly becoming a social reality. At least on the overt level the attitude to women has undergone significant modifications, although on the covert level the alteration in the basic attitude structure does not keep pace with the more explicit changes. Thus we find that there is a considerable role inflation, or at any rate a role expansion for women. Beyond their traditional roles they are called upon to assume several new roles also. This is true in particular for the upper stratum of the lower class and for the middle strata of the entire society in which education has been taken up as a mark of social respectability and also as an instrument of economic gain.

3.289 The persistence of traditional norms in regard to women's essentially domestic roles and the addition of new work roles in the wider society has created problems of adjustment for them. It has added to their burdens. Everyday domestic chores plus full time employment institute a workload that cannot be managed easily by them. On the domestic front there is little help; they cannot neglect their responsibilities in this sphere. The in-laws and even the husband and the children do not extend to them the measure of sympathy and support they need. Added to this are the latest prejudices and built-in rivalries that are constantly at work in the home atmosphere. These contribute considerably to the psychological stress that a working woman has to undergo. The lot of the working woman, unless she has a really well-paid job and a set of educated family members who are attuned to her psychological needs and physical capabilities, is not available. She has in fact to carry on two full time jobs leaving her little time for rest and leisure or for self improvement. The pattern for social interaction demanded by her out-of-home job cannot be smoothly worked out: the demands of the home and the built-in prejudices create impediments that cannot be managed easily.

3.290 New life styles of women are now visible. In pre-independence days some women had voluntarily decided against marriage in order to devote their life to the national cause or social service. Today in the professions, services, and in the field of social work, we have a number of successful unmarried women who enjoy high status. Along with married women, who are primarily housewives, there are women who combine home and work, and there are also those who may return to their work or take up a job after their children have grown up.

3.291 The pace of change in attitudes to women working outside the home or participating in public life has been slow and uneven. These attitudes are related to conceptions about women's inherent attitudes and capacities, her proper sphere of work, and men-women relationships. Thus, education as a field of employment is more popular because the hours of work are more or less fixed, work at home and outside can be satisfactorily combined, and the work involves less contact with men. Even in mixed schools and institutions of higher education contact with male colleagues does not have to be close. Work in the field of education does not conflict with traditional norms of femininity.

3.292 Although nursing does not conflict with the feminine ideal of service, the job involves contact with impure objects, contact with male patients, doctors and para-medical personnel, and odd hours of work, during night and day. It is only in recent years that nursing is becoming a more respectable and therefore acceptable calling in some regions.⁵⁵

3.293 Entry in films or the professional theatre had been looked down upon by almost all sections of the community. In many regions participation in domestic performances was associated with particular castes and communities whose women were professional dancers and singers.⁵⁶ Now the situation has improved, though the prejudice

55. *Infra*—Chapter V.

56. For example, *Tamasha & Lavani* in Maharashtra, and *Nautanki* in U. P.

still persists. In the past, dancing and singing were associated with courtesans only, but gradually with the cultural renaissance, they are becoming more acceptable in society. Giving a remunerative performance before an audience may be accepted in large cities, but it would still be considered unbecoming for the wife or daughter-in-law in small towns. The All India Radio has helped greatly in weakening this prejudice. Teaching music or dancing or organising music programmes is now acceptable. However, living by music or dance performances alone is laden with problems which a woman finds difficult to manage as a career.

3.294 In small towns and villages, young women, more so unmarried girls, find it very difficult to work because of the attitude of the people. A touring job is even more difficult. If a girl has been brought up in a traditional home she is likely to be handicapped by her own personality, and if she has been brought up in a modern atmosphere she is likely to create more misunderstanding.

3.295 In recent years women have done well in administrative jobs. But in this field the difficulties are of a somewhat different nature. At the utmost, men are prepared to accept a woman as an equal, but men still do not relish working under a woman boss.⁵⁷ The traditional conception of women's limitations and her proper place were responsible for the well-known episode in Uttar Pradesh when the Chief Minister Shri Charan Singh stated that women officers should not be entrusted with administrative responsibility. He thought that women were unfit for administrative jobs. The Press said that the Chief Minister was of the opinion that women were too 'delicate' to be entrusted with executive jobs. He also refused to meet a delegation of women officers wanting to convey their protest. Earlier, he had abolished the Mahila Yojna. According to press reports he exhorted the women to go back to their kitchens and look after their children.⁵⁸

3.296 This may be an extreme case but it does indicate a certain way of thinking. There are many who share this view and relate the stories about the stupidity and failures of women in high positions, but who adopt a progressive posture in public.⁵⁹ The view that women do not possess the essential attributes of an officer to function in high executive ranks cannot be attributed to male chauvinism or a conservative attitude alone. Even some women appear to assume it tacitly. For example, Shivani, a popular woman writer in Hindi, has portrayed a fictitious women officer of the Indian Administrative Service in a manner that highlights the frailty of woman. Her novelette on this theme was serialized in a popular weekly and later issued in a book form. The book leaves an unmistakable impression in the minds of the common reader that women do not quite measure up to positions of higher authority.

3.297 The problems connected with dual roles of women may be viewed as those of burden of work, interpersonal relations within the family, and of role conflict. Gainful employment of wives is often viewed with a degree of ambivalence by men. It is approved because it lessens the financial burden and raises the standard of living. However, it can be a source of disruption in the smooth running of the household. The other aspect is the economic independence of women, which is resented by many husbands. It is difficult to say how many women are in a position to take decisions about their own earnings. According to a study the freedom of association and movement which outdoor work involves, is not approved of in many homes and puts a stigma on working women.⁶⁰ Even in those regions and communities which have had a long tradition of women working out-side the home, husbands still do not tolerate women coming late from office.

3.298 Most men do not want to give up their traditionally superior position in the family and do not offer any assistance to their wives in domestic chores. In middle class families that cannot afford domestic help and in which the husband does not share any work, the burden on the wife can become unbearable. A change in older attitudes and values is essential for achieving rationalization of the load of the work. During our tours, we were repeatedly told that men when living in the West helped their wives with domestic chores but when they returned to India, they stopped giving this help.

57. In 1967 a secretariat clerk in Maharashtra made a violent attack on his woman officer, because he could not tolerate being bossed over by a woman officer. "Content Analysis of periodicals in Marathi" prepared for the Committee by Sudha Gorgate.

58. Times of India, dated 19th July, 1970. Patriot, 18 July 1970.

59. From notes of an ICSSR-IIAS Survey by S. C. Dube.

60. Ross, Eileen: *Hindu Family in an Urban Setting*, 1961.

3.299 Often women themselves do not like the idea of their husbands doing domestic chores as they consider that to be a feminine role. The attitude of relatives and neighbours is also unfavourable. They criticize working women as bad mothers and inefficient housewives. A study focussed largely on middle class working women of Patna reveals that husbands of 131 respondents thought that it was the wife's duty to carry out household jobs and to look after children. 66 were of the opinion that, since both were working, it was the duty of the husband to share some responsibility.⁶¹ Many women have to leave their jobs in order to be able to do their household duties satisfactorily. This, however, depends on the financial condition of the family.

3.300 Although the in-laws still tend to expect the same amount of attention from a working woman as they would from a non-working woman, there are positive indications that the situation is changing. When the women's earning is an absolute necessity for the family or if the woman has a well-paid and high status job, she does get consideration.

3.301 It is often remarked that if the woman has to spend most of her income on servants and conveyance her employment is of no use. But it is seldom understood that a career in itself has its rewards and satisfactions-

3.302 The situation of women tossed between work and home leads to a role conflict. Some of them develop a feeling of guilt that they are unable to look after the children and home properly. Working women tend to pamper their children because they want to make up for what they consider to be lack of proper attention on their part. This is because of their own role perception rooted in their socialization and the expectations of other members of the family. It is not realized that a child does not need the continued presence of its mother for its proper growth, nor is it realized that the other parent is as important for the healthy growth of the child. Role conflict makes working women tire themselves out giving personal service to the husband and attending to various tasks which are often beyond their physical capacity and endurance.

3.303 Besides the strains of shouldering the burden of dual roles and of facing a role conflict there is often another kind of strain arising from a lack of adjustment between a woman's position at home and in the place of work. She may be better educated and little paid than the husband but he claims absolute superiority over her at home. "The husband's denial of the right of the wife over her own earned money or her privileges to relax or to move about freely.....was found to be related to his patriarchal attitude towards husband-wife privileges and obligations."⁶²

3.304 But the problem of status inconsistency is deeper than this. Unfortunately our society is extremely status conscious and status-bound. If the wife enjoys a higher status in her work place, her circle of associates are also of higher status, and however the wife may try not to bring in her office status at home, the husband's adjustment with her becomes difficult. He tends to consider it a reversal of roles. Such a husband tends to become more aggressive. Sometimes the wife also is to be blamed, for she too is a part of the status conscious society.

3.305 The situation in which the husband is employed in an inferior position in the same office or directly under the wife is perhaps the worst. Many wives are known to have deliberately refused promotions, in order to maintain peace in the family. Thus, when the position of the husband as the principal breadwinner, as superior to the wife, and as having authority in the family is challenged, serious problems can arise.

3.306 Another aspect of status inconsistency emerges in situations in which a wife has a relatively low status job with limited earning. For example, nurses marrying doctors are found to leave their occupation mainly for reasons of status. Stenographers and primary even middle school teachers have to leave their jobs after marrying business or executives and thus waste their training, aptitude, and experience because these are low paid and relatively low status jobs. It has been found that sometimes these earnings of the wife may be necessary for the household, and because of the presence of relatives or servants in the house, the wife may not be occupied fully at home, but still her working in low status jobs is not allowed, for it brings down the status of the husband. An idle wife attuned to the life pattern of the husband is appreciated more. It is seen that a woman is not allowed to work in low status positions even

61. Kalarani : *Role Conflict in Working Women*, Thesis for Ph. D., Ranchi University, 1974.
62. Kapur, Premilla : *Marriage & the Working Women*, 1970.

in an honorary capacity. By leaving their jobs women are forced to withdraw the support that they were giving to their needy parents or siblings before marriage.

3.307 It should be a woman's right to play a dual role. A woman should not be penalised for her important contribution as mother in the perpetuation of society. Childbearing is treated as purely a matter concerning women and hence the attitude that a woman must either give up her job or her right to bear children. A distinction between man's work and woman's work in respect of household jobs will have to be removed. If what are called woman's jobs come to be respected by society, men will cease to hesitate doing these jobs. This attitude needs to be built into the socialization process of children, both in the home and in the school.

3.308 It is necessary to make adequate provisions to give women opportunity to do both their jobs efficiently and satisfactorily. To this end, it is necessary to provide for creches, nurseries, and labour saving devices. Since all families cannot afford to buy gadgets it will be necessary to provide gadgets to do washing, vegetable chopping, chapati making and such other things which make household work a drudgery.

3.309 In the absence of many social and physical amenities like labour saving devices, easy transport, creches, inexpensive processed foods, as also conditions of service, such as transfers, many women will have to remain principally mothers and housewives. Some may have to confine themselves to the role of a housewife while the children are young. If family is important, home-making is also important. The inputs of household work and the mothers' role in rearing of children need to be recognized by the family and the wider society.

3.310 The housewife certainly contributes, even though it may be indirectly, towards a stable national economy by consolidating the economic structure of her own home. Her efficient management of her home alone ensures the saving potentiality of her earning husband. Recognition of her work for the purposes of 'national accounting' would certainly enhance the status of woman and acknowledge the debt of society to her.⁶³

IV. Some Special Problems :

3.311 In a rapidly changing and culturally differentiated society, a slow process of adjustment in its social value system and rigidity of its institutions, results in various forms of incongruous behaviour. The changing social patterns without restructuring or redefining social values and norms always cause deviant behaviour. Structural changes in the socio-economic system are needed for a smooth process of adjustment.

3.312 The special problems of women discussed in this section cannot be tackled by legal methods of penalisation and prevention alone but by providing institutional infrastructure for their reform and rehabilitation. The gap in the perception of their needs and available opportunities, is conducive to exploitation of the weaker section of society and cannot be offset by development programmes alone but by adequate understanding of the magnitude and intricacies of the problem and providing supportive institutional framework.

3.313 **Prostitution :** Prostitution is the worst form of exploitation of women and as an institution it speaks of man's tolerance of this exploitation on an organised level in society. Woman is viewed solely as a sex object and as an outlet for man's baser instincts. The condemnation of the woman and not the man is the continuance of the standards of dual morality which prevail in most countries with regard to men and women. Some societies have continued to regard prostitution as a necessary evil and have tolerated it as such.

3.314 The social anthropologists' explanation of prostitution is that it has been in existence in some form or other as long as society has attempted to regulate and control sex relationships through the institutions of marriage and family. Promiscuity or sexual communism preceded marriage and family, and sex was shared by all without any taboo or control. With the institutionalisation of sex behaviour through marriage and particularly in society which lays great emphasis on the chastity of its women, prostitutes became a necessary evil. In a way, they helped to retain the chastity and purity of women in society and hence performed a social function. Even now among certain tribal communities entrance of women into commercialised prostitution is a recent phenomenon and has only started with the advent of

63. Discussions on women held in the Constituent Assembly and the first Parliament relating to Fundamental Rights, Directive Principles and the Hindu Code Bill. Dissenting note on the draft reported by Prof. K. T. Shah.

outsiders into the tribal community. In tribal communities which always enjoyed a certain degree of sexual freedom, the institution of prostitution did not exist. "In India, the emphasis on chastity value prior to marriage compelled women of deflowered innocence to court prostitution. Dowry among the upper castes has been a constraint in marriage and some frustrated women were forced to become prostitutes."¹ In parts of Andhra Pradesh, college girls and young women practice prostitution and save their earnings. Some even have pass-books in which they indicate their savings which they say will form their dowry to enable them to make a decent marriage. "Child marriages and social discouragement of remarriage of young widows have greatly helped in the recruitment of prostitutes from village India. Caste inequality and sex exploitation by the economically well off castes are other factors."²

3.315 In the 19th century, certain social customs were responsible for many women resorting to this profession, who were otherwise outside the hereditary and customary groups of prostitutes.³ The spread of child marriages, early widowhood, social taboos on widow remarriages, caste rigidity, dowry system and the practice of polygamy and polyandry among certain communities, the decay in the joint family system, and the generally low status accorded to women in society contributed to women being driven to prostitution as the only occupation for livelihood. At the same time, the beginning of industrialisation and consequent urbanisation in the later part of the 19th and early 20th century, drew in a large number of women other than hereditary prostitutes into this profession. One reason was the wide sex disparity in the big cities when the migrant worker who had to leave his family behind in the village for mainly economic reasons, became a customer for the prostitute.

3.316 Briefly, the following social and religious customs which may have contributed directly or indirectly to prostitution are enumerated :

The Devdasi system which was so widespread in pre-independence India that it necessitated legal measures such as the Madras Devdasi Prevention and Dedication Act of 1947 and the Bombay Devdasi Protection Act of 1954 is a system that continues today in parts of Tamil Nadu, Mysore, Andhra Pradesh and Orissa, practised particularly by the lower castes. A study conducted in Bombay in the mid sixties reported that as many as 30% of the Bombay prostitutes were of Devdasi origin. In a study of the Bijapur district girls are still dedicated to the temples amongst certain sections of the lower castes and enter the occupation with the consent of the parents. No social stigma is attached to this. The reason is mainly economic. These girls are also taken out of the town or village by an agent and a large part of the earnings of the Devdasis goes to the family members and agents.⁴

3.317 Prostitution has been the traditional occupation among certain castes, for instance, the Naiks from the hilly regions of Uttar Pradesh where the woman is traditionally the bread winner and the men have to marry from another caste, as their own womenfolk take to prostitution. The Uttar Pradesh Naik Girls' Protection Act was passed as early as 1929, but the practice continues even today and Punekar and Rao's study indicated that 43% of the prostitutes were drawn from the Naiks of Uttar Pradesh.

3.318 Certain Castes practise historical and traditional prostitution. A survey in the Raipur and Raigarh districts for the Committee on the Status of the Women found that very loose marriage ties in which adultery is scarcely regarded as an offence, encourages prostitution. "A woman may go and live openly with other men and her husband will take her back or two men each will place their spouse at each other's disposal." Women of the lower caste earn money and support themselves through prostitution which is carried on at the weekly bazaars or fairs. The women have historically been exploited by the higher castes, and are often handed over or mortgaged temporarily to creditors on return of loan. The men of the communities are fond of drinking and gambling and encourage the woman to earn money for them and emergence of the new industrial towns has encouraged commercialisation of prostitution.⁵ The survey also found that agents and intermediaries come from outside the community and parents, in-laws and husbands take the initiative in getting women into prostitution for commercial gain. A large part of the income is sent back to the

1. Ranga Rao, M. & Raghavender Rao, J. V.—Prostitutes of Hyderabad—p.15.

2. The Prostitutes of Hyderabad—Rangarao M and Raghavender Rao, J. V.—PP. 15-16.

3. Such customary groups were the women attached to temples as devadasis or mangalmukhis or the courtesans patronised by royal and aristocratic families.

4. Trivedi, H. R.—A survey on Exploitation of Scheduled Caste Women undertaken by the Harijan Sevak Sangh for the Committee.

5. Ibid.

families. Prostitution is the only way open to women to earn a livelihood for the family. No stigma is attached to the woman if she brings wealth or income from prostitution to her natal or conjugal home. A recent study of the Immoral Trafficking in women from the Purola Block of Uttarkashi district—(U.P.)⁶ reveals that a large number of girls from the lower socio-economic communities go in for prostitution. In 1969, 45 women had entered and remained in this profession for 3 years. It was estimated that about approximately 500 families were dependent on this profession on account of extreme poverty. 60% of girls from Rawain area were operating in Delhi and 77 agents were engaged in procuring women for prostitution. The causes for prostitution were the high bride price and consequent indebtedness of the couple who were forced to work as bonded labour. The girl was then compelled to earn money to free the family from this debt through prostitution. In other cases, a man from a higher caste may pay bride price and contract a marriage with one or more girls of a poor family and take her to Delhi and sell her into the trade. In other cases, Delhi brothel keepers used girls from Purola to entice other girls, cousins etc. by showing them the easy life they could enjoy in the brothels. According to one report the history of this traffic in the Rawain area is about 60 years old, but it has increased recently, with the entrance of officials and traders.

3.319 Among the Bajgi caste in Purola region its occupation in service of the temple may be closely connected with the large number of women who go into trade. Though the Devadasi System as such does not exist, certain castes closely connected with work of the temple are more prone to prostitution. Families of majority of these prostitutes are landless and upto 75% bonded for life to upper caste money lenders. Many of these communities belonging to lower socio-economic groups, practise polyandry due to high bride price.⁷ This may be a sociological cause for the ease with which the women descend into prostitution. Women generally occupy a very low social position and labour ceaselessly in homes and in the field once they are bought or sold. Trafficking is on the increase in these regions and sometimes higher castes or powerful men in the village act as agents and are in liaison with procurers and brothel keepers for taking young girls into prostitution.

3.320 According to a sociological analysis⁸ of Prostitution in India, there are about 10,000 dancing and singing girls in India usually known as 'Nautch girls'. This community practices the occupation on an hereditary basis in different regions. The majority of 'Nautch girls' in Delhi are Muslims. The study also mentions a recent addition to the poor and customary army of prostitutes from the middle-class. These women practice prostitution often with the connivance of their parents or husbands in order to secure huge sums of money to keep up an appearance of affluence. Educated and outwardly respectable, these women are prompted to take to prostitution because of the undue emphasis on values of affluence. Middle class prostitution can ultimately be traced to the economic factor, though it is the cult of consumption which encourages this pattern of prostitution. Large number of prostitutes also come from a group of women who have been deserted or abandoned by husbands and have no other source of income or employment open for them. According to the Commissioner of Police, Calcutta, a large number of middle class families are surviving on income from prostitution, in the absence of alternative avenues of income. A number of these women are educated and quite a few are even graduates.

3.321 The causes of prostitution may be classified into the following six groups:⁹

- (a) Natural events such as death of father/mother/guardian/husband or relatives;
- (b) Economic causes such as poverty and destitution;
- (c) Domestic causes such as ill-treatment or neglect by parents, husband, or relatives;
- (d) Social causes such as kidnapping, seduction, deception, bad influence;
- (e) Causes of physiological significance such as sexual urge, illegitimate pregnancy, etc.;
- (f) Causes related to mental disposition of attitudes such as ignorance, desire for easy life and moral values.

6. "From the green Hills of Purola to the Brothels of Delhi and Meerut". A paper prepared after field study and survey conducted by the National Academy of Administration, Mussoorie.

7. Supra para 3.188.

8. Oomen, T. K.—'Some Sociological Aspects of Prostitution. The Indian case'—paper Presented to the Triennial Conference of the International Alliance of Women.—Nov. 7-14, 1973.

9. Punekar, S. D. & Rao, K. - Study of Prostitution in Bombay. - 1962 p.p. 91-92.

Types of Prostitutes:

3.322 The present practitioners of this trade can broadly be divided into two groups—hereditary class, where prostitution is the ancestral profession and the non-hereditary class who are driven to prostitution or introduced to prostitution due to number of reasons such as economic distress, desertion, destitution, lack of protection family problems or pathological reasons, desire for easy life, etc. The report of the Committee on Moral and Social Hygiene of the Central Social Welfare Board in 1958 divided the prostitutes into four groups, namely (1) hereditary (community, customs and social patterns), (2) religious or traditional, (3) victims of social and sociological conditions and (4) highly sexed, pathological cases.

3.323 Prostitution must be viewed not from the traditional or historical aspect, but as a form of exploitation of women and girls. According to Gandhiji, "Man is primarily responsible for the existence of these unfortunate members of society." Prostitution has now been commercialised and a number of intermediaries, the brothel keeper, the pimps and touts for whom the profit motive has become the guiding principle, has increased the exploitation of women and girls.

3.324 Taking into consideration the three elements of prostitution payment, promiscuity and emotional disturbances there can be two broad categories—professional and non-professional (clandestine). Professional or the public prostitute derives her sole and only livelihood from this profession in a brothel or in red-light districts in big towns. The higher type in this profession are street walkers and 'call girls' who find their clients in hotel lobbies, bars and luxurious establishments. Non-professionals are those who conduct the business in a clandestine manner.¹⁰

3.325 Prostitution represents the exploitation of the poor by the rich and of women by men. If women have really to reach the level of equality with men, society should be in a position to ensure economic, social and psychological security for the traditionally exploited women folk. Prostitution is the worst form of women's exploitation and inequality.

3.326 What must be emphasised is the growing commercialization in the exploitation of women and girls. While the urbanization process and industrialisation with its accompanying evils, particularly socio-economic insecurity, poor living conditions, etc., are important forces for the increase of prostitution in recent years, this profession like any other, operates on a commercial basis according to the law of demand and supply. The growing incidence of prostitution in metropolitan cities and urban areas is an indication of the growing demand on the one hand and poverty on the other. Some sociologists have emphasised the role of economic factors over and above the traditional and customary factors, such as poverty, low wages, lack of gainful employment, partial or complete unemployment are contributory factors that constrain helpless women to embrace prostitution.

3.327 The increasing commercial aspect is represented in the host of intermediaries and allied trades which gather around prostitution. The most important ones are the procurers, pimps, land-lords, musical instrument players, intoxicant sellers, panwallas, hotel keepers, flower sellers and the rough elements whose help is sought for protection. Some intermediaries work on a commission basis, like pimps. Procurers are engaged in the purchase and sale of women. The Survey of Exploitation of Scheduled Castes women has also emphasised that commercial prostitution has gained preponderance over the sacred or traditional prostitution, which used to be practised in the Bijapur region. An agent usually contacts a family and buys the girl or a fake marriage is declared and she is taken out of the town or village to practice this trade.

3.328 Once these girls have been lured or enticed, and in some cases forced into this profession, they are taken to a brothel. If the girls are unwilling, they are mercilessly beaten and punished and even locked up if they do not do what the brothel keeper or gharwali desires. Their status is that of an employee and their income is divided between the brothel keeper and as commission for the pimps and procurers. The rest is taken up for rent, lodging and food, while the remaining income is so small that the prostitute has hardly any saving or security for old age. They are fully exploited by the brothel keeper who enters into a bargain with customers and the prostitute has no choice, but to follow his or her orders. They are kept strictly under control and surveillance of the brothel keeper and

10. Punekar & Dixhit - "Economic and Social Status of Prostitutes & Devdasis" - Tata Institute of Social Science,

his hired men. The prostitute is not permitted or encouraged to save or keep any valuables which are usually stolen. As she grows older, a prostitute desires to set herself up as a brothel keeper, if possible, or amongst some of the traditional communities like the Barias, the Bednies and Takyas, they admit their daughters into the profession when they are grown up. She herself initiates her into the profession so that she may continue to support herself through the daughter's earnings. Amongst 'Deredar girls' they are given training in music and dance by their mothers from girlhood so that their mehfil and mujras, get large number of customers. In some cases, after a woman has been in the profession for 10 to 15 years, and is not able to attract customers, she is thrown out on the streets by brothel keepers, and is reduced to beggary.¹¹

3.329 In certain tribal regions, particularly where new projects for construction, industry or mines, etc., have been established, contractors, traders and petty officials have seduced and then abandoned tribal girls. These girls have been forced into prostitution because they have been alienated and thrown out of their own tribal society. In Baladila (M.P.) for example, a serious situation was created, but the management forced the men to marry these tribal girls and thus saved them from drifting into prostitution. Generally such strong measures are not resorted to and the fact remains that a very large number of tribal girls are being lured into prostitution by unscrupulous men who have made this a very profitable business.

3.330 The Suppression of Immoral Traffic in Women and Girls Act 1956 repealed all previous enactments passed by the State and brought uniformity in the law. "The Act aimed at the Suppression of commercialised vice and not at the penalisation of the individual prostitute, or of prostitution itself".¹² In one case, the individual prostitute can be penalised. It is where she carries on prostitution "within a distance of 200 yards of any place of public, religious worship, educational institution, hostel, hospital, nursing home".¹³

3.331 According to Senior Police officials, this section has severely restricted their powers for suppression of this traffic.

"This restriction needs immediate amendment as the vice of prostitution has gone to posh colonies where the pimps have hired modern houses to run this profession. In the absence of these premises situated within 200 yards from the places as envisaged above, it is not possible to prosecute such women or girls soliciting their bodies for immoral purposes."¹⁴

3.332 Another practical difficulty imposed by the Act itself is the provision for witnesses. Section 15 (2) of the Act lays down that Special Police Officers conducting the raid shall call upon two or more respectable inhabitants, at least one of whom shall be a woman, of the locality in which the place is situated to attend and witness the search. Police officers have pointed out that this proves to be extremely difficult particularly in the case of a woman witness. Considering the social conditions existing today in our country, no respectable man/woman would like to help the police in the sex offences. If anybody turns up for such help, he has to face harassment and even repent for his action, as the persons prosecuted are themselves criminals or are supported by them. At first these witnesses are lured with money, wine and women. If these tactics fail they are threatened with dire consequences with immediate danger to their lives and properties. Efforts were made to procure witnesses through welfare associations and agencies but all in vain. A letter was written to the Association for Moral and Social Hygiene in India for furnishing some names of social workers including lady social workers so that they could be contacted at the time of raids on brothels and places of disrepute. They have replied that although the members of the Association are very sincere workers they are not certain whether any of them would be prepared to come forward during raids and face cross-examination in Courts."¹⁵

3.333 Social workers and police officers have repeatedly brought to our notice that the punishment imposed under the Act is inadequate to deter people from this crime particularly in view of the enormous income that can be earned from this traffic.

11. Mathur, A. S. and Gupta, B. L. *Prostitutes and Prostitution* page - 30.

12. Beotra, B. R. - *Suppression of Immoral Traffic in Women and Girls Act 1956 - 1970* p. 10

13. Sec. 7 of the Act

14. Sahney, M. L., D. S. P., *Crime Branch*, New Delhi - in paper presented to Judicial Seminar on Correctional Services, February, 1974.

15. *Ibid*

3.334 It has been realised that the Act was itself not sufficient to control this commercial exploitation and traffic in women. In fact the number of prosecutions under this Act have been very small in comparison to the volume of the traffic. A report of the Central Bureau of Correctional Services indicates that while the number of prosecutions under the Act has increased from 6428 in 1965 to 7573 in 1969 i. e. by 17.8%, the rate of prosecution for the same period has gone down by about 10%. About 58% of these persons were only fined, 14% acquitted and 8% were released on admonition. Only 11% were sentenced to imprisonment with a fine which is nominal (Rs. 200/-) and 4% without fine. 78% were charged under the Act for seducing for purposes of prostitution (Section 8 of the Suppression of Immoral Traffic Act). During the same period the number of such women rescued declined sharply. Only 7.2% were charged under section 4, i. e. living on the earnings over the age of 18. The law only prosecutes persons over the age of 18 years for living on the earnings of prostitutes but exceptions are made in favour of mother, son, daughter and sister or other persons unable to support themselves on account of age or mental and physical incapacity.¹⁶

3.335 The Department of Social Welfare set up an Expert Committee in 1968 to consider various proposals and suggestions for enlarging the scope of the Act with a view to make it more comprehensive; various amendments are under consideration.

3.336 It is important that certain changes be made in the Act to help eradicate this social evil. It is essential to prevent the women caught under this Act from returning to the profession by adequate rehabilitation arrangements. The persons who pay for their bail are invariably the procurers or brothel keepers. Instead of sending the women and girls to jails, it is necessary to send them to protective homes. The age limit should also be lowered from 21 to 18 years. Adequate arrangements should be made to give protection to girls and women in moral and social danger particularly destitute women, unmarried mothers and helpless young widows. At an orientation camp of the Association for Social Health in India held in March, 1974, one of the participants suggested improving the existing institutionalised services providing proper protection for abandoned and illegitimate children, specially girls, as a method that may help control prostitution. As far as the rehabilitative aspect is concerned, the Rama Rau Committee, 1954, had said that the after-care homes are not adequate and they should be associated with some programme to help prostitutes earn a decent living. Those who are detained under the Act require long-term treatment for rehabilitation. Special counselling service towards better understanding of the problems of prostitutes is important. The children of prostitutes should be prevented from entering the profession, especially the girls. They should be segregated from their mothers and institutionalised, but not in special homes which would put a social stigma on them. Women and girls, who do not wish to continue in this profession, but are compelled to do so for economic reasons should be rescued and engaged in remunerative work. There is, therefore, greater need for understanding the cause underlying prostitution and to make efforts to prevent more women from entering this profession as well as to rehabilitate those who are already victims of the trade.

3.337 These women need to be rehabilitated and their emotional and psychological problems are to be tackled with understanding. The most significant aspect is preventive. This applies particularly to women and girls in moral danger. An important segment of this group are women who are victims of family discord. Counselling services could help them and prevent their taking recourse to this profession. Counselling centres should also have homes for such women.

3.338 **Women in Prisons:** According to recent estimate, women members constitute about 4.3% of the convicts and 3.2% of the undertrial prisoners. 73% of female convicts and 54% of undertrials are from Andhra, Maharashtra and Tamil Nadu. Since they constitute numerically a small segment of the total convict population, the condition of women prisoners has not received adequate attention. 72% of the female convicts are between 21-40 years of age, and around 10% are between 16-20. 12% of women convicts are illiterates, 73% of them are married, 15% unmarried and 12% are widows. This means that a large section have children, who are either deprived of maternal care or in the case of very young children, are living with their mothers in prisons.

3.339 It has been found that more women serve short sentences as compared to men. Habitual proneness to crime is found to be less among them. This also means that a large

16. Implementation of S. I. T. in Women and Girls Act - A statistical analysis 1965-69. C. B. C. S. Department of Social Welfare, Government of India.

majority of women prisoners are 'freshers' and are exposed to the influence of prison life for the first time. We would like to draw attention to the fact that the Law Commission has recommended that convicts on short-term sentences should not be sent to prison, where they are exposed to the unhealthy influence of hardened criminals.

3.340 Separate living quarters or wards with female wardens or matrons are provided for women as a rule. In rare cases child care services or creches for mothers in prisons are available in a few States. Training in skills such as niwar and dari making, tailoring, spinning, weaving, bidi-making, embroidery, etc., are not necessarily in tune with market labour requirements or conducive to self-employment.

3.341 The background of women prisoners studied by one or two experts reveals that their crime comes mainly from poverty or social helplessness. Most common are pickpocketing, attempted suicide, family feuds and domestic quarrels, questions pertaining to the custody of children, strangling of illegitimate infants, destitution or vagrancy and murder of a lover.¹⁷

3.342 The generally low level of literacy among women convicts, except for Kerala, where 45% of women convicts were illiterate, reflects the lack of effort by prison authorities to educate them. In general, "the women sections of the jails have practically no positive education or work programmes, presumably due to few prisoners; they cannot participate in the general routine of work due to strict segregation. Sometimes the women prisoners have dependent children with them for want of any family arrangement outside. Life for these young ones can be equally futile. Efforts to get up creches for children of women prisoners did not succeed due to very small number of children." Discrimination against women is prevalent, since they hardly share any of the privileges available to men convicts such as wage system, canteen, out-door work, PT drill, library or prayer meetings or general recreation, or holidays. This is explained by the problems of segregation and inadequate staff to organise such activities for women.

3.343 It has been reported to us by senior officials of the police force that in some prisons, lunatics, both criminals and non-criminals, are housed along with other women prisoners. This appears to us to be not only unhealthy, but a dangerous practice. We fail to understand how any reform or rehabilitation of these convicts or the treatment of these lunatics is at all possible under these circumstances. Another problem that has been brought to our notice is that women prisoners are often sent to places away from their residence. This makes it impossible for their family, particularly children, to visit them. This isolation increases the difficulties of rehabilitation and readjustment to family life on their release.

3.344 The Committee feels that the problems of women prisoners deserve special attention, particularly with regard to the care of the children if any, their rehabilitation and education. Since most of the women prisoners cannot return to their families or do not have families to return to after they are released, suitable arrangements for their rehabilitation needs to be considered along with after care programmes. While in prison, these women must be taught some activity or imparted training in a skill which would enable them to earn their livelihood on release. A suggestion made to us is to involve women's voluntary organisations for arranging useful educational, recreational and work programmes for women in prisons. Successful results have been seen in Maharashtra and Gujarat State where long term women prisoners are released to the care of recognised women's institutions run by social welfare agencies.

3.345 Suicide: Suicide is a social problem affecting both men and women. However, a study of the causes and factors for committing suicide provide an indication of the status of women. Suicide is a 'reaction to problems that apparently cannot be solved in any other way—a final response which a human-being makes to inner emotional distress.' Cultural patterns, socio-economic conditions, and group activities influence the extent of suicides and act as inhibiting or encouraging factors. In India, the medieval Hindu institution of 'Sati', which was finally stopped due to vigorous efforts of social reformers like Raja Ram Mohan Roy in the 19th century, was the earliest institutionalised form of suicide for women. Though it was thought to have had religious sanctions, it arose out of a social system which had degraded and dehumanised the widows. Regardless of age, a number of those widows had to mount on the funeral pyre of their husbands forced by relatives and

17. Shah, J.—Women in Prisons—paper prepared for the Committee; Karkaria, B. J., in Illustrated Weekly of India, August 1974.

others. The prohibition of widow remarriage, the austerity imposed upon a widow and the cruel treatment meted out to her must have persuaded some of them to end their lives on the pyre in preference to leading a miserable existence. According to the vital statistics on deaths by causes and sub-causes prepared by the Registrar General's Census (Sample Registration System), suicides were reported to be the highest for women in the age-group 15-34, both in 1966 and 1969. The overall incidence of suicide for women was reported to be higher than males in 1966 and 1969, but it declined in 1967 and 1968.

3.346 In 1970 on an average 41.4% of the persons who committed suicide were women. Among causes for suicide, the following were listed : 1) despair over dreadful disease 14.1% (2) quarrels with parents-in-law 8.6% and (3) quarrels with married partners 6.3% as the major factors. An analysis of the percentage distribution of total deaths by cause and sub-cause for women indicates that the maximum percentage of suicides occurred in the age group 15-34, the second largest being in the 35-54 age group.

3.347 It may be assumed that in this age group, "suicides committed by females were mainly due to quarrel with parents-in-laws and quarrels with married partners. The joint family system still prevails in India, therefore, the suicides by females may be taken to reflect the extent of oppression of the daughter-in-law in the joint family at the hands of the in-laws."¹⁸

3.348 Though no national survey or in-depth study on a national scale on the causes of suicides have been done so far, the report of the Suicide Enquiry Committee in Gujarat State studied the problem of suicides between 1960-64 in the State. The study found that the number of women committing suicide for physical factors, mental factors and social and domestic factors, were larger than men, being respectively 514 males for 516 females, 431 males for 513 females, and 562 males for 1,192 females. As far as the economic factors were concerned, 256 men committed suicide as compared to 55 women. For miscellaneous factors 292 males committed suicide as compared to 196 females.

3.349 A further analysis of the social factors indicates that out of 1,784 persons, 1,192 women committed suicide, and out of these the largest number were due to failure to adjust in matrimony, domestic unhappiness or ill-treatment at the hands of relatives. These were further cross-analysed with levels of education and a definite negative co-relation between the educational level of women and the number of suicides was observed. The percentage of illiterate females constituted 61.9% of the total cases of female suicides. As the educational level increased, the number of suicides decreased. Among the number of persons who committed suicide due to unhappy human life and other factors, the largest were from the illiterate group, next being literates below primary level, followed by primary, middle and higher categories. Significantly 1,058 married people against 95 single people commit suicide due to domestic unhappiness and out of these 836 were females which corroborates the statement about suppression of women in married life particularly by in-laws.¹⁹ The study established that more women in the 15-34 age group commit suicides due to domestic unhappiness.

3.350 This Report pointed out the 'cultural lag' in our social institutions which have not kept pace with educational and technological advance as the basic cause behind the suicides. It listed as reasons, the lack of freedom in the choice of the marriage partner, changes in the family units and especially joint family relationships, child marriage, dowry and lack of education about sex and married life among others.

3.351 The report recommended homes for women to which they can resort in times of extreme hardship or family estrangement. Some voluntary homes have been established in Gujarat.

3.352 An earlier survey of suicides in Bombay State in 1954-57, indicated that the existence of suicide per population is 3.4 males and 3.9 females in Ahmedabad range, 4.1 males and 8.9 females in Rajkot range per one lakh of the population. The highest number of suicides was in the rural areas. 2,006 females who commit suicide out of 5,173 were in the 15-24 age group. The highest number of suicides was by women due to domestic quarrel. 75.8 per cent of the females were from the literate group. The Suicide Enquiry Committee of

18. Shah, Dr. Jyotsna H.—"*Status of Women and Suicide*" page 35.

19. Ibid Page 39

Saurashtra in 1952-55 also bore out the fact that twice as many women commit suicide as men.

3.353 Though apart from Maharashtra and Gujarat, data on suicide and causes is lacking from other states, suicide remains a widespread social problem. There are various items appearing in the daily Press from time to time giving news of women who die due to injuries received from burns, etc. Some of the reported accidental deaths due to burns etc. may very well be self-inflicted. The majority of these women are housewives in the susceptible age group mentioned above.

"The causes have to be searched for...in our social structure, enjoining upon women an inferior status and position, socially, economically and culturally."²⁰

3.354 Another cause that in our opinion also pushes many women to end their lives is breakdown of the family economy. In recent years there have been reports of women committing suicide along with their children. The burden of economic insecurity and grim poverty presses more heavily on women's minds particularly when she has children to feed. This increasing strain causes complete breakdowns in many cases. The absence of social security or adequate employment opportunities leaves a woman utterly helpless, in the absence of a breadwinner in the family. Rather than see her children starve, it is not unnatural for her to prefer ending her life. Suicides thus represent a serious malaise in social organisations, which will increase as life becomes harsher with increasing poverty and destitution.

3.355 **Unmarried Mothers** : Data on unmarried mothers is not available as there has been no attempt to examine the prevalence of this problem by any agency. Nevertheless it remains a social problem. Some indication is available in the Report of the Suicide Enquiry Committee which studied suicides in Gujarat between 1960-64. One of the causes of high rate of suicide among women was due to illegitimate pregnancies. Some time back, a leading gynaecologist had observed that there was an increase in the number of abortions asked for by unmarried girls after passing of the Medical Termination of Pregnancy Act.²¹ Social workers have long been aware of the problem of illegitimate pregnancies and unmarried mothers. Before the liberalising of the Abortion Act these women and girls had either to resort to quacks for abortions and in the process a number of women may have lost their lives. The other alternative was to abandon such children in the destitute homes. Very often these unmarried mothers joined the ranks of the destitute women and were exposed to moral and social danger. Some of the women in the brothels may have initially joined the profession because of this stigma. While some of these illegitimate pregnancies may be due to rape, others were due to unhappy or maladjusted family life, broken homes, sexual maladjustment or even ignorance. A large number of women who were pushed into prostitution or into committing suicide did so because society does not accept an unmarried mother.

3.356 At an orientation camp held by the Association of Social Health in March 1974, some experts have advocated sex education since a great deal of confused thinking prevails with regard to sex. A medical expert citing case histories and research findings said, "there is either complete ignorance or complete misunderstanding about the role of sex and this results in social and sexual maladjustments. This calls for evolving an intelligent and comprehensive programme for sex education."²²

A medical expert at the same seminar cautioned against the alarming rise in venereal infection among teenagers, due to profound socio-economic changes in society over the past few decades. They advocated sex education, health education to control this. Apparently prostitution accounted for only 20% in the spread of V.D. infection.²³

3.357 The Committee in the course of its tours met a few such cases in women's homes. Some of them had conceived as a result of rape, but the refusal of the family to accept them or assist them in any manner had wrecked their lives completely. In one instance, in Andhra, the father wanted to kill her, but the mother, with the assistance of a school teacher, got her admitted into a women's home. The number of such homes are most inadequate and very little is known about them, particularly in the villages.

20. Ibid. P. 49

21. Report, 1st December 1973. Workshop on Abortion—Organised by International Alliance of Women and All India Women's Conference in Bombay.

22. A Resume VIII-All India Orientation Camp. 14-20 March, 74. Association for Social Health in India-p. 27

23. Ibid P. 12-14.

3.358 The problem of unmarried mothers is a result of rapid socio-economic change. The value system is changing and the struggle for existence brings out tensions leading to deviant behaviour. In Western countries it was found that the existence of this problem rapidly increased with increasing urbanisation, growing affluence and the cult of materialism. The resultant break down of the moral order systems leads to the disintegration of traditional social values. Indian society even now practices segregation of the sexes and tremendous emphasis is placed on the chastity of women. Under such circumstances the tensions are often aggravated and problems become manifest.

3.359 We feel that this problem requires much greater attention than it has received so far from both official agencies and voluntary welfare organisations, particularly as the indications of its increasing incidence are already manifest. It is important to provide adequate assistance to these women for their rehabilitation and care for their children. Counselling services are essential to persuade families to take a more humane view of this problem.

Aged women

3.360 Traditional Indian society had through the joint family system provided for the care of aged persons. Even in the absence of the joint family, traditional norms of behaviour required the children to take adequate care of their aged parents and grandparents. The pressure of socio-economic changes, the break-down of the joint family and of traditional values have increased the significance of the problem of care of aged persons. It is easier for old men to live on their own but it is much more difficult for women. Most of them are economically helpless; even the minority, who may have some source of income are not in a position to look after themselves or protect themselves. This problem was brought to our notice by the Ramakrishna Mission in Banaras which is running a home for old women.

3.361 The Committee also visited an old-age home in Poona where all the inmates were from well-to-do families. Their relatives were paying Rs. 125/-per month for food and lodging and some of them were paying for extra services like milk etc. These women had been sent to the homes because they could not get along with their daughters-in-law. We also heard of cases where old women were living in destitute homes, not because they were destitutes but because there were no other homes available for them and the only way they could enter these homes was by declaring themselves destitute. It was also brought to our notice that these women, even if they have any family, are seldom visited by them.

3.362 A number of State Governments are operating schemes for old age pensions and the annual expenditure on such schemes is now about Rs. 10.00 crores. The reports received by us in most of the States indicate, however, that the amounts are very meagre, and the number of pensioners falls far short of applications or even recommended cases. We were also informed that because of their helplessness these pensioners have to give a share to the intermediaries, who assist them in obtaining the pension. This becomes a continuous process, because the women are threatened that without the commission the Government will be informed of their death so that the pension will cease. We were also told that payments are not always regular causing great hardship.

3.363 In the changing social milieu the problem of aged women who are regarded as encumbrances by their families is going to increase. Greater attention to their assistance and care is necessary from the State and voluntary agencies.

Destitute Women :

3.364 It was reported to us in many places that the number of destitute women has been increasing in recent years. According to one report, a large number of such women are found scrounging for small fish in the nullahs along highways leading out of Calcutta. A majority of them are elderly women. In a village in Birbhum we met a group of Santhals women who had been reduced to complete destitution because their ill health and age prevented them from obtaining any employment. They were agricultural labourers whom the land owners would no longer employ.

3.365 A large group of destitute women are widows and deserted women who have no means of support for themselves or their children. They swell the ranks of beggars and are exploited for immoral traffic. The Department of Social Welfare has estimated that about 1 lakh women, in the age group 20 to 44, join the ranks of destitutes every year. We believe this to be very short of reality. Institutionalised services now available for

them are highly inadequate, both in numbers and in the type of services provided for rehabilitation. Services for this group have only touched the fringe of the problem. It is imperative to obtain more reliable data to assess the magnitude of the problem and organise adequate services for their rehabilitation.

Recommendations :

3.366 The reviews of the disabilities and constraints on women, which stem from socio-cultural institutions, indicates that the majority of women are still very far from enjoying the rights and opportunities guaranteed to them by the Constitution. Society has not yet succeeded in framing the required norms or institutions to enable women to fulfil the multiple roles that they are expected to play in India today. On the other hand, the increasing incidence of practices like dowry, indicate a further lowering of the status of women. They also indicate a process of regression from some of the norms developed during the Freedom Movement. We have been perturbed by the findings of the content analysis of periodicals in the regional languages, that concern for women and their problems, which received an impetus during the Freedom Movement, has suffered a decline in the last two decades. The social laws that sought to mitigate the problems of women in their family life have remained unknown to a large mass of women in this country, who are as ignorant of their legal rights today as they were before independence.

3.367 We realise the changes in social attitudes and institutions cannot be brought about very rapidly. It is, however, necessary to accelerate this process of change by deliberate and planned efforts. Responsibility for this acceleration has to be shared by the State and the community, particularly that section of the community which believes in the equality of women. We, therefore, urge that community organisations, particularly women's organisations, should mobilise public opinion and strengthen social efforts against oppressive institutions like polygamy, dowry, ostentatious expenditure on weddings and child marriage, and mount a campaign for the dissemination of information about the legal rights of women to increase their awareness. This is a joint responsibility, which has to be shared by community organisations, legislators, who have helped to frame these laws and the Government which is responsible for implementing them.

CHAPTER IV

WOMEN AND THE LAW

4.1 One of the main characteristics of modern society is a heavy reliance on law to bring about social change. This is particularly true of countries which had for centuries been under foreign rule and attained independence after a long struggle. Inequalities and exploitation, generated or intensified by colonial regimes, cannot certainly be eliminated by freedom from foreign rule only. The tasks of social reconstruction, development and nation-building all call for major changes in the social order, to achieve which legislation is one of the main instruments. It can act directly, as a norm setter, or indirectly, providing institutions which accelerate social change by making it more acceptable. One example is the introduction of compulsory education.

4.2 Like other colonial countries, independent India has also relied heavily on legislation in its effort to usher in a society where there will be no discrimination or inequality. It has sought to protect the interests of those who suffer from social and political disabilities by penalising the practice of untouchability, eliminating caste distinctions and so on. By clearly emphasising the principle of equality and removing all legal discrimination *inter-alia* between sexes, our leaders have shown their acceptance of the view that to achieve liberty there must be complete liberty for women and "all legislative traces of the inequality of women without exception must be removed."¹

4.3 Stress on the removal of discrimination and special protective legislation for women was necessary, because the British policy in the field of family law had a crippling effect on women. Whatever the motivation, the British adopted a policy of letting Hindus be governed by Hindu Law and Muslims by Muslim Law in matters of family relations.² This policy of relying on age-old personal laws has been described as "another act of enlightened policy,"³ but the result of it was to encourage the feeling of separateness and prevent the unity of the two communities. The policy achieved such success that modernisation of most of these laws has proved difficult even today. Coupled with this policy was another one of non-interference or rather non-intervention (in family law) on the plea that 'as the British legislature cannot make Mohammedan or Hindu religion, so neither can it make Mohammedan or Hindu Law'.⁴ This resulted in stagnation with the result that the two systems could neither absorb nor adjust to socio-economic changes. Social tensions inevitably arise in situations when "law does not in fact answer the needs arising from major social change."⁵

4.4 In the early part of the 19th century, due to the efforts of our social reformers some marginal adjustments were made in response to humanitarian considerations and social demands. Although female infanticide had been banned earlier,⁶ the most significant was the legislation which penalised the practice of Sati.⁷ The groundwork for this had been laid for a very long time⁸ and this was an example where legislative legitimacy was given to an accepted social norm. The then Governor General, Lord Bentinck, in referring to the proposed legislation, said that the government would be following and not going ahead of public opinion.

4.5 The prevalence, in 18th and early 19th centuries, of child marriage leading often to early widowhood was one of the major concerns of the social reformers. Their tireless efforts

1. Lenin, Coll. Works, Vol. 30, p. 408

2. The Personal laws of Parsis, Christians etc. were formalised much later.

3. Ranken—*Background to Indian Law* (1946) p. 3

4. Law Commission, 1855

5. Dror Yehzkel, *Sociology of Law* (ed. Vilhelm Aubert) 1969

6. Bengal Regulation XXI of 1795 and III of 1804

7. Bengal Sati Regulation 1829,

Madras and Bombay 1830

8. Aurangzeb had decreed that "In all lands under Mogul rule, never again should officials allow a woman to be burnt."

to curb this social evil finally resulted in 1856 in 'The Hindu Widows' Remarriage Act. But even such social legislation stopped after 1857. The social reformers realised that in the face of the Government's refusal to legislate on social matters the only way open was to try and spread education more widely among the people, particularly women, in the hope that this would help to eliminate some of the inhuman practices and also act as an incentive to women to organise and demand legislative changes.

4.6 As the national movement gained in strength, the early 20th century showed some activity in the legislative field. The plight of widows without any means of their own, depending entirely on the family, led to the passing of the Hindu Women's Rights to Property Act in 1929 followed by another in 1937. These laws, while they made the widow less dependent financially during her lifetime, stopped short of giving her any substantial rights of ownership since her right to property was only for life.

4.7 The success of the policy of division can also be seen from the fact that though demands for changes in the Muslim law to improve the position of women were also building up, the reformers of the two communities did not work together. The significant change that was made as a result of all the agitation for improvement among the Muslims was to give the right of divorce to Muslim women in 1939.⁹

4.8 A by-product of the policy of non-intervention in family law had been the diversification (due to customs) among the major personal laws in different parts of the country and varied interpretations of the sacred texts. These differences had hardened over the years. Among the Muslim schools of law—there were others besides the Sunnis and Shias. This was partially remedied by the Shariat Act 1937 which brought all Muslims under the Act and practically abrogated the customary practices which had grown over the years. Among the Hindus where there were two major schools—Mitakshara and Dayabhaga—and other sub-schools, lack of uniformity posed a serious problem.

4.9 The demand for major changes, no longer marginal ones, grew as a result of the untiring efforts of Gandhiji, who wanted women to suffer from no social or legal disabilities. The inferior position of women in all matters, guardianship, inheritance and divorce, had an effect on the personality of the women. Under Gandhiji's leadership the demand for improvement and modernisation of the law grew and ultimately the Government was compelled to move. A committee was constituted under the chairmanship of Sir B. N. Rau, whose terms of reference included the suggestions for change and the Codification of Hindu Law, so that all Hindus would be governed by the same law. Even though the report was ready and Gandhiji's exhortation that 'women must suffer from no disability or discrimination' had influenced India's national leaders, the resistance to change was so great that no effective steps could be taken for a number of years.

4.10 Only after independence, under the leadership of Pandit Nehru could this matter be taken up. Even so, the law had to be passed piecemeal owing to the resistance from those who believed in the status quo. It is significant that the same body which, sitting as the Constituent Assembly, adopted the equal rights clauses in the Constitution without any debate, while functioning in its capacity as the Central Legislature, blocked the Hindu Code Bill which attempted to provide only partial equality to women.

4.11 The participation in the freedom movement had greatly helped in the acceptance of the idea of women's equality and the need for their emancipation. As a result, Indian women achieved political and some social rights easily with independence, and did not have to struggle for them as women in many other countries.

4.12 But legislation cannot by itself change society. To translate these rights into reality is the task of other agencies. Public opinion has to be moulded to accept these rights. The judiciary and the executive have a major role to play in this. This effort has not always been forthcoming. Sometimes the judiciary has interpreted new legislation strictly and failed to give effect to the principle underlying the legislation, as for example in dealing with cases of bigamy or the right of women to work. The executive branch of the government has seldom made an effort to set up the machinery to educate the people about the socio-economic changes. The mass media used for publicity for certain measures taken by government, has been conspicuously silent about social legislation. If legislation reflects the social values of a country 'the degree of women's emancipation is the natural measure of the general emancipation

9. *Infra* paras 4.97 to 4.100

I POLYGAMY

1. General

4.13 Full equality of sexes can hardly be possible in a legal system which permits polygamy and a social system which tolerates it. Though the institution of polygamy has prevailed traditionally in India,¹ in the last five or more decades it is on the wane and most marriages are today monogamous.² The spread of Christianity with its concept of marriage 'as a union for life of one man with one woman' marked the first step towards the legal recognition of the principle of monogamy. The advanced communities in the country like the Parsees and the Brahmos opted for the principle. The Parsee Marriage and Divorce Act 1865 provided that any marriage during the life-time of his or her wife or husband was void.³ The Indian Christian Marriage Act, 1872 lays down the condition that neither of the persons intending to be married shall have a wife or husband still living.⁴ With the enactment of the Hindu Marriage Act, 1955, which lays down the principle of monogamy for all Hindus⁵, 88% of the Indian population are legally governed by the principle of monogamy.

4.14 The only personal law, which has remained impervious to the changing trend from polygamy to monogamy, is Muslim Law. Most Muslim countries such as Turkey, Iraq, Iran, Syria, Tunisia, Indonesia, Pakistan (including Bangladesh, which was then a part of Pakistan) have introduced reforms of varying degrees to correct the abuse of polygamy, but no legislative effort has so far been made in India to ameliorate the hardship caused to the Muslim women by the continuance of the institution of polygamy. According to an extract given by a Urdu Editor :

"...the law of polygamy is not an invention of the Muslims, but a part of the comprehensive religious code granted to them by God. And the Muslims have been exercising this right of theirs since the time of the holy Prophet to this day. To tamper with it would definitely amount to interference in religion. If some Muslim or non-Muslim administration forces monogamy on Muslims, it would be a case of gross injustice; and the Muslims will oppose it as a religious duty."(⁶).

4.15 During its tours, the Committee met with three different types of reaction. In U. P. we found a positive hostility to any reform in Muslim Law particularly in the educated middle classes.⁷ Among the poorer classes of the same State we found a desire to have monogamous marriages and blunt denunciation of the inequities of polygamy.⁸ In Kashmir the women uniformly and emphatically demanded that polygamy must be banned.

4.16 The seeming indifference on the part of the Government in leaving only one section of the citizens to be governed by a law permitting polygamy and other inequalities was sought

1. Polygamy (used here to mean multiple wives) was not confined to India but was prevalent in many parts of the world.
"The most civilised nations must have begun with polygamy" Letourneau, *Evolution of Marriage*—"As an institution polygamy exists in all parts of the world."
Encyclopaedia Britannica
2. Chatterjee—*Impact of Social Legislation and Social Change* p. 131. He finds the economic factor as one of the main reasons for this and supports it with data collected from the rural society of Varanasi district. His conclusion from his data is that "by and large economic affluence is the most crucial factor for bigamy & polygamy".
3. The Parsi Marriage and Divorce Act, 1865 Sec. 4 which corresponds to the Parsi Marriage and Divorce Act, 1936 Sec. 5.
4. The Indian Christian Marriage Act, 1872 Sec. 60
5. Hindu Marriage Act 1955, Sec. 5 (1) Even before the Hindu Marriage Act, many of the States like Bombay (1946) Madras (1947) Saurashtra (1954) had passed their own Prevention of Hindu Bigamous Marriage Act.
Madras Marumakkattayam Act, 1933 prohibits bigamy for those who have the matrilineal family organ sations and are governed by the Marumakkattayam Law.
6. Qadri Maulana Syed Ahmed, *Zindagi*, Rampur (tr. Dr. Mumtaz Ali Khan)—Seminar on Muslim Personal Law by the Islamic Research Circle.
7. For example the entire teaching staff of a leading women's college.
8. The chikan-workers of Lucknow and weavers in the villages of Banaras.

to be explained by the Minister for Law and Justice, Mr. Gokhale, when he said, "We believe that while we should do everything possible to build up and cultivate the consciousness for reform, the urge and the demand for the reform must come from the community itself."⁹

2. Standardized Contracts :

4.17 Marriage is regarded as a contract under Muslim law for the purpose of procreation and legalizing of children. Therefore, some eminent jurists like Fyzee and Danial Latifi advocate the device of standard contract of marriage which would provide *inter alia* for stipulation like "The husband shall not take a second wife while the first marriage subsists¹⁰ and if the husband has married or gone through a form of marriage with another woman after the date thereof"¹¹ the wife shall have the power to divorce. As in Islamic Law marriage is regarded as a contract, the prevailing opinion of the jurists is that generally such contracts become enforceable in courts.

4.18 Two subsidiary views exist as regards the technique : (i) to propagate the standard form of contract and leave it to the volition of the parties to enter into such contracts and (ii) to provide an amendment to section 2 A of the Shariat Act *inter alia* that "every contract of marriage shall be deemed to include, unless otherwise expressly provided, the terms set out", which would contain a provision that the husband shall not take a second wife during the subsistence of the marriage.

4.19 The critical question for consideration is : What are the consequences of a breach of the contractual stipulation on the part of the husband that he would not contract a second marriage during the subsistence of the prior marriage ? Fyzee says that :-

- a) restitution may be refused to the husband;
- b) certain rights as to dower may arise; or
- c) the wife may have a right to divorce; or in an extreme case
- d) the marriage itself may be dissolved.

4.20 Thus the effective right of a Muslim wife having a standard contract is to get the dissolution of marriage or a right to live separately from the husband. This fails to provide a substantive relief to the first wife with children. As the second marriage is not invalidated, the position of the husband is not prejudicially affected but for the financial implications arising out of the step. The deterrence of the criminal sanction when a person intends to contract a second marriage is absent. Further, the solution of standard contracts is ineffective, in cases of fake conversions to Islam from other religions to circumvent the prohibition against bigamy. The remedy is out of step with the position in the other personal laws in India and should be rejected.

3. Reforms to Correct the Abuse of Polygamy :

4.21 The first approach to reform Muslim law relating to polygamy is to abolish it altogether. In Turkey polygamy was abolished by law. The Turkish Civil Code lays down that no person shall marry again unless he proves that the former marriage has been dissolved by death, divorce or by a decree of nullity.¹² The Turkish Family Law of Cyprus also provides that a marriage shall be declared invalid where at the date of the marriage one of the parties is already married.¹³ The Tunisian Code of Personal Status in article 18 provides : "Plurality of wives is prohibited. Any person who being already married and before the marriage is lawfully dissolved, marries again, shall be liable to imprisonment for one year or for a fine of 240,000 francs or to both even if the second marriage is in violation of any requirements

9. Presidential Address in the seminar on *Islamic Personal Law in Modern India*. 14th-16th January. 1972. He also said that it is "not so much because of the fear of the repercussions but because of a desire to hasten slowly in a matter which vitally affects the sentiments of the Muslim Community."
Ed. Tahir, Mahmood—1972, p. 6.

10. Latifi, Danial,—Muslim Personal Law Reform, IV *Journal of Constitutional and Parliamentary studies*, III p. 115 (1970).

11. Fyzee—*Outlines of Muhammadan Law*—pp, 466, 467 (1967) A specimen of the contract form is given in the book.

12. Art. 93 cited in Mahmood Tahir *Family Law Reform in the Muslim World*, p. 21 (1972)

13. Ibid p. 26 The Turkish Family (Marriage and Divorce) Law, 1951 (Cyprus) Article 8.

4.22 It deserves to be emphasized that in Tunisia the justification for the abolition of polygamy had its basis on a re-evaluation or re-interpretation of Islamic principles. Professor Anderson¹⁶ points out the following distinctive grounds :

"The first was the broadly based argument that there were certain institutions, such as slavery and polygamy, which were acceptable at a certain stage in human development, but which were repugnant to the civilised conscience today.....

The second argument was...that the "Verse of polygamy" itself allows plurality of wives only on two conditions, one of which is that the would-be polygamist should have no fear whatever of treating them with less than equal justice. But experience, the President said, had proved that no man other than a prophet was capable of such a feat especially in contemporary conditions."

The second approach is to regulate the husband's right to contract a second marriage by rendering it necessary to obtain judicial or official sanction for a bigamous marriage. In most countries where Muslims constitute a majority of the population this approach, with variations, is favoured. Iran, Iraq, Singapore and Syria provide that the permission of the court is necessary for a bigamous marriage of the husband.¹⁷ The laws provide that in granting the permission the courts should satisfy themselves about the financial capacity of the husband to maintain more than one wife. Some of these laws provide for additional grounds to be fulfilled like the capacity to do equal justice to the co-wives.

4.23 On the other hand, Pakistan, Ceylon and Indonesia confer the power to regulate bigamous marriage on institutions other than the regular courts. For example, section 6 of the Muslim Family Laws Ordinance of Pakistan states that no male can contract another marriage during the subsistence of an existing marriage except with the previous permission of the Arbitration Council.¹⁸ The Arbitration Council may grant the permission if it is satisfied that the proposed marriage is necessary and just.¹⁹ If a person contracts another marriage without such permission, upon a complaint being made, he is liable for punishment which may extend to one year's simple imprisonment or a fine of Rs 5,000/- or both.²⁰ The legislation in Ceylon prescribes for the prior notice of the intended marriage and the display of the notice in the mosques and at the residence of the parties, that is, the husband, the first wife and the prospective second wife.²¹ In Indonesia the Family Law Regulations of 1947 enjoin the marriage officials to clarify and explain the position of a bigamous marriage under Islamic Law and legal conditions and obligations relating to it, to the person intending to contract a bigamous marriage.²²

4.24 David Pearl studied the impact of the Muslim Family Laws Ordinance (1961) in Quetta (Baluchistan), Pakistan.²³ Two points relevant for our consideration emerge from his study. First,

"many men risk the penalties inherent in section 6 (5) (a) and (b) of the ordinance, and marry a second wife without bothering to apply to the arbitration council for its approval."²⁴

14. The Tunisian Code of Personal Status, 1958 art. 18 (Tahir Mahmood translation).

15. For details see generally, Mahmood Tahir, *Supra* n. 12

16. Anderson, *Muslim Personal Law in India*, in *Islamic Law in Modern India* p. 37 (1972).

17. Mahmood Tahir, *Supra* n. 12.

18. Muslim Family Law Ordinance, 1961 Sec. 6.

19. It takes into account such matters as infertility, physical infirmity, physical unfitness for conjugal relationship, wilful avoidance of a decree of restitution of conjugal rights and insanity on the part of an existing wife. These are in accordance with the rules laid down under the Family Ordinance Rules—Sec. 14 Pearl, David—*Journal of the Indian Law Institute*—Vol. 17 pp. 560, 564.

20. The Muslim Family Laws Ordinance, 1961 Sec. 6 (5).

21. Mahmood Tahir, *Supra* n. 12 p. 277

22. *Ibid.*

23. Pearl David, *The Impact of the Muslim Family Laws Ordinance (1961) in Quetta (Baluchistan) Pakistan* *Supra* n. 19

24. *Ibid* p. 564.

4.25 The second relates to classification of marriages in the Muslim Law. A marriage is valid (*sabih*) if all the conditions and formalities relating to marriage have been properly fulfilled. A valid marriage confers on the wife the right to dower, maintenance etc.; and creates reciprocal rights of inheritance between the husband and wife. Among the Sunnis, a marriage that is not valid may be either void (*battl*) or irregular (*fasid*).²⁵ A void marriage does not create any rights or obligations among the parties. The children of the union are illegitimate. An irregular marriage has no legal effect before consummation and it can be terminated by words showing intention to separate.²⁶ The children of the union are legitimate but the irregular marriage does not create mutual rights of inheritance between the husband and wife. Pearl points out that the distinction between valid, void and irregular marriages was not eliminated and, therefore, "it was remarkably easy...for a girl under 16 to be married, or a man to ignore sections 6 & 7 of the ordinance".²⁷

4.26 While the desirability of reform in Muslim Law is generally acknowledged, as mentioned, the government has taken no step towards changing the law for over two decades on the view that public opinion in the Muslim community did not favour a change.²⁸ But this view cannot be reconciled with the declaration of equality and social justice. We are, therefore, of the opinion that ignoring the interest of Muslim women is a denial of social justice. The right to equality, in our view, like the right to free speech, is an individual right.

An Analysis Of Polygamous Marriages Among Muslims

4.27 An analysis of polygamous marriages among Muslims in India²⁹ classifies them into four groups :

- (a) The largest number of cases are of husbands who abandon their wives (and frequently children as well) and go off and marry somebody else. Frequently, the second wife remains ignorant about the earlier marriage and the children;
- (b) Where the wives, finding the marriage unbearable have left their husbands who, in order to avoid paying the deferred Mahr, refuse to divorce them;
- (c) Wives who because of economic dependence acquiesce in the second marriage;
- (d) Where a person of another religious persuasion deliberately adopts Islam to contract a marriage which could not be permitted under his own system of law.

5. Regulated Bigamy

4.28 The adoption of monogamy as a rule among the Hindus under the Hindu Marriage Act, 1955 has been criticised and an opinion has been expressed in favour of "carefully regulated bigamy."

"It is a serious question whether the sympathy which the public and courts seem to harbour for bigamous unions has not solid basis which we ought to recognise. It is argued that a carefully regulated bigamy i. e. popular marriages in cases of infertility, mental instability of the wife, and other cases where the good sense and humanity of the husband and his family recoils from divorcing her or annulling the marriage would not only be in accord with traditional Hindu religious sentiment and practice, but also much more realistic. It would savour less of "shop-window-dressing" with which the Hindu Code is charged. There is a small part of India which at present has controlled bigamy for Hindu husbands, namely the former Portuguese India (Goa, Daman & Diu)...This appears to work extremely well, and the Parliament has had the good sense not to interfere with the modified Hindu Law still in force in those territories...

25. See generally Mulla, *Principles of Mahomedan Law*, Sections 265-67. Among Shias a marriage is either valid or void. Irregular marriages are treated as void.

26. Pearl, David, *Supra* n 19 p. 268

27. *Ibid*

28. Prof. Mujeeb in his Inaugural Address at the Seminar on Islamic Law in India pointed out that there "has been no opposition from the Muslims against the law which forbids a government servant to have more than one wife". He suggests that the "Law could be extended to cover those employed in institutions receiving governmental grants and further still to those dependent on government assistance in any form". *Supra* n. 9—p 11.

29. *Ibid* — p. 141. Tyabji Kamila, Polygamy, Unilateral Divorce, Mahr in Muslim Law. As Interpreted in India

polygamy. It is the health and happiness of Hindus that counts, and the rash abolition of polygamy in a euphoric moment is not working out satisfactorily."³⁰

As this view gives a misleading impression of being in the interests of women and as it is likely to be advanced in the context of Muslim Law also, it needs to be rebutted in full. We are not aware of a sympathy for bigamous unions or an opinion in favour of them in the absence of a systematic survey. A survey made some years ago showed 85% of the men and 96% of the women to be in favour of compulsory monogamy.³¹ While judicial decisions have rendered the enforcement of the penal provision against bigamy in section 17 of the Hindu Marriage Act, 1955, difficult,³² it would only be fair to say that this stemmed not from a sentiment in favour of bigamy, but from a deep seated judicial attitude that penal provisions should be construed strictly. The 'economic grounds', in our considered view, equate women with beasts of burden and cannot be accepted. It is doubtful whether the advocates of controlled bigamy will also favour controlled polyandry as a general rule on the same grounds.³³

4.29 Long before the passing of the Hindu Marriage Act, monogamy in preference to controlled bigamy existed under the Marumakattayam Law in the State of Travancore—Cochin and in the Malabar District of the Madras province. It was introduced in the province of Bombay in 1946 and in the province of Madras in 1949.

4.30 *We are of the firm view that there can be no compromise on the basic policy of monogamy being the rule for all communities in India. Any compromise in this regard will only perpetuate the existing inequalities in the Status of women.*

6. Enforcement Of Provisions Against Bigamy Under The Hindu Marriage Act

4.31 While bigamy has been made an offence and the second marriage should be void, bigamous marriages are still prevalent among Hindus. Apart from the figures available,³⁴ during its tour in many of the States the Committee came to know of a large number of such marriages. In Manipur, even though the women were very bitter about the wide prevalence of this practice, they were compelled to accept it as divorce or prosecution of the husband resulted in social ostracism. The Government had failed to enforce the law. Even Government servants, who are forbidden under the Government Servants' Conduct Rules, were practising polygamy. The Committee was also informed that a Resolution in the Legislative Assembly calling upon the Government to enforce the law had been defeated by an overwhelming majority. It is interesting to note that most women of Manipur earn to support their families. In spite of their economic independence they have been unable to assert their social and legal rights. Quite a few of them were living with their co-wives, some had separate establishments but all of them contributed a part of their incomes to their husbands. Little social stigma seemed to be attached to such a situation. In West Bengal a training centre in Sriniketan for promoting self-employment had a number of women discarded by their husbands who had married a second time. We met two co-wives taking the training whose husbands discarded them for a third wife. Similar cases were brought to our notice in some parts of Andhra Pradesh, Bihar, Uttar Pradesh and in the rural areas of Madhya Pradesh.

4.32 Under the present law, only an aggrieved person can initiate proceedings for bigamy, which means the husband or the wife. In the case of the wife the complaint may be made on her behalf by one of her family members.³⁵ Quite often an economically dependent woman who is also uneducated has neither the knowledge nor the means to go to court.

30. Dettett, *A Critique of Modern Hindu Law*, (1970), P. 309

31. Opinion Survey of Urban Population conducted by the Faculty of Law of the Andhra University in 1955-Venkataraman S.-'Social Legislation and Public Opinion, Supreme Court Journal, Vol. 19, p. 177

32. See *Infra* paras 4.31—4.44.

33. For a criticism of this view, see Diwan Paras, *Modern Hindu Law*, 1972 p. 103.

34. *Incidence of Polygynous marriages in India—Census of India 1961—*(mimeographed) Analysis based on sample of one lakh marriages from selected villages. The survey found 5.8% polygynous marriages among Hindus, 6.72% among Jains, 7.97% among Buddhists and 5.7% among Muslims. This is 'contrary to the prevailing notion that the incidence of polygynous marriages is higher among the Muslims than among other communities'

35. Section 198 Criminal Procedure Code—proviso—Members of the wife's family are father, mother, brother, sister, son or daughter, father's or mother's brother or sister.

Many of them are reluctant to appear in court and face social criticism as brought out very clearly by Justice Sachar :—

“We also cannot shut our eyes to the practical difficulties and problems faced by an Indian girl...Instances are numerous where Indian women have gone through a literal misery of marriage for years rather than go to a court of law and expose themselves to public gaze. The attitude of the parents and relations in most of these cases is also un-sympathetic.”³⁶

4.33 Where social customs prevent a woman from appearing in public, the law permits some other person to make the complaint with the permission of the court. The question to be considered is whether the right to initiate prosecution for bigamy should be extended to persons other than the girl's family in all cases, in view of the general reluctance of her family members to lodge a complaint against the son-in-law or brother-in-law. The necessity of obtaining prior permission of the Court would provide adequate safeguard against undue harassment. In small towns and villages a social worker could fulfil this role admirably.

4.34 *In our opinion such a provision is necessary to prevent the current wide-spread violation of a most salutary provision of the law which very clearly lays down the social policy of the country.*

4.35 The existing penal provision against bigamy is further defeated in a considerable number of cases because of a technical construction placed on Section 17 of the Act. The Supreme Court in *Bhaurao vs. State of Maharashtra*³⁷ held that the offence of bigamy was not proved unless it was established that the second marriage was celebrated with proper ceremonies and due form. This conclusion was arrived at on the basis that the section used the word ‘solemnized’. They observe.³⁸

The word ‘solemnize’ means, in connection with a marriage, ‘to celebrate the marriage with proper ceremonies and due form’ according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is ‘celebrated’ or performed with proper ceremonies and due form it cannot be said to be ‘solemnized’. It is therefore essential, for the purpose of Sec. 17 of the Act, that the marriage to which Sec. 494, I. P. C. applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and due form.

As the law requires no specific ceremonies but recognises ceremonies of marriage according to custom it becomes extremely difficult to determine which ceremony or ceremonies were really essential. Whether the construction put by the court will subserve the policy and purpose of the Act or the social objectives of the legislation was never in their contemplation.

4.36 The result of this interpretation is that a difficult burden is cast on the prosecution to show that the second marriage is performed with all due formalities. This burden in many cases cannot be discharged owing to the fact that second marriages during the subsistence of a prior marriage, are seldom performed with the usual pomp and show.

4.37 Even if it is not so, this judicial interpretation facilitates widespread evasion of law. As pointed out by Professor Derrett,³⁹ the existing position will give rise to two types of devices being followed to evade prosecution for bigamy. First, a person intending to take a second wife may deliberately undergo a defective form of marriage, to defend himself against a prosecution launched by the first wife or her relatives. Second, the relatives and friends of the second “wife” may commit perjury and say that the marriage is not properly solemnized and the first wife or her relatives would not be in a position to rebut it.

4.38 Shri M. B. Majumdar suggested that the words “solemnized” may be replaced by the words “contracted”.⁴⁰ But given the contemporary judicial attitudes, inherited from the English legal system, whereby the policy and purpose of an Act often are sacrificed to a literal construction of the Act, it is doubtful whether the suggested amendment will change the situation materially.⁴¹

36. *Nijhawan vs. Nijhawan* 1933 Delhi 200, 211

37. A. I. R. 1965 S. C. 1964. This decision was reiterated in two subsequent decisions of the Supreme Court, namely, *Kewal Ram vs. H. P. Administration*, AIR 1966 S. C. 1564, and *Priya Bala vs. Suresh Chandra*, AIR 1971 S. C. 1153.

38. *Id.* at 1565.

39. Derrett, A. Round-up of Bigamous Marriages, *Bombay Law Reporter* Vol. 69 p. 84 (J) (1967).

40. Majumdar, notes on Recent Cases, *Bombay Law Reporter* Vol. 68 P. 57 (J) (1966)

41. See also Derrett, *Supra* n 39 p. 85

perform some of the essential ceremonies by parties shall not be construed to mean that the offence of bigamy was not committed, if such a ceremony of marriage gives rise to a de facto relationship of husband and wife.

7. Injunction :

4.40 As already mentioned there is often an inhibition against prosecuting a husband for his second marriage in the present social context. The easier remedy is to prevent such a marriage taking place, if there is prior knowledge of its impending celebration. The following two cases will show that though bigamy, including the attempt and abetment of it is an offence, the position is not as clear cut as we would like it to be.

4.41 In *Sankarappa Vs. Basamma*⁴³ the Mysore High Court held that a Hindu wife is entitled to a perpetual injunction restraining her husband from contracting a second marriage; that the suit is clearly permitted by section 54 of the Specific Relief Act, 1877 (Sec. 38 of the Specific Relief Act, 1963).

4.42 On the other hand, a Division Bench of the Patna High Court in *Uma Prasad Singh vs. Smt. Radha Devi*⁴⁴ takes the view that a remedy by way of injunction against a second marriage is not available under the provisions of the Hindu Marriage Act.

4.43 The case seems to have been argued only on the basis of the Hindu Marriage Act, 1955 and the question of remedy under the Specific Relief Act, 1963 was not referred to by the parties or by the court. "The only point for consideration is...where the suit as framed and filed by opposite party 1, could be maintained under any provision of the Hindu Marriage Act, 1955."⁴⁵

4.44 Though the two cases can be clearly distinguished and there is no real conflict, it is desirable to clarify the matter. *We recommend that a provision be introduced in Section 6 of the Hindu Marriage Act to the effect that nothing contained in the Hindu Marriage Act shall prevent a court from granting an injunction against a proposed bigamous marriage under Act or under the provisions of the Specific Relief Act, 1963.*

8. Laws in Former French and Portuguese Territories :

4.45 After the merger of the former French and Portuguese colonial possessions with India, the laws in force prior to merger in these territories have not been abrogated and therefore they continue to be in force. A reference will now be made to these laws insofar as they affect the status of women.

A. Laws in Pondicherry :

4.46 Prior to the merger, three different systems of personal law were applicable in Pondicherry.⁴⁶ First, the Hindus Laws and customs applicable to Hindu and native Christians, (other than renoncants).⁴⁷ However, in matters relating to marriage, divorce and allied topics the Christians were governed by the French Civil Code. Second, the Muslim Law, which was more or less similar to that applied in India, governed the Muslims. Third, the French Law which was applied to the people of French origin and *renoncants*.

4.47 After the merger with India the categories of laws applicable increased and consequently the applicability of the Hindu Law became complicated. David Annoussamy categorizes the application of Hindu Law thus :⁴⁸

A. Hindu Law prevailing in India applicable to migrants from the rest of India. B. Hindu Law applicable to Hindus of Pondicherrian origin consisting of Indian statutes (Applicable to Hindus). C. Hindu Law consisting solely of the Hindu local customs adhered to by Hindus who remained French nationals. D. Hindu Law consisting of customs of

42. Sec. 17 Hindu Marriage Act.

43. A. I. R. 1964, Mys. p. 247

44. A. I. R. 1967 Pat. p. 200

45. Ibid p. 221

46. Annoussamy, David, Pondicherry, Babel of Personal Laws—J. I. L. I. Vol. 14 p. 420 (1972).

47. Renoncants are persons who renounced their personal laws in favour of the French personal law as embodied in the Civil Code.

48. *Supra* n. 46 p. 421

Pondicherry except in matters of marriage and divorce. This category has been further sub-divided into two groups, viz : 1. Indian Christians who are governed according to their choice in respect of marriage, either by the French Civil Code or the Indian Christian Marriage Act and the Indian Divorce Act, and 2. Indian Christians who are exclusively governed by the French Civil Code.

B. Laws in Goa, Daman and Diu :

4.48 Even though these territories are now a part of India, no effort has so far been made to extend the Hindu Marriage Act to them. The result is that a section of Hindus today continues to be governed by a law which permits polygamy.

(a) Districts of Goa and Diu :

4.49 In the districts of Goa, polygamy is permissible among Hindus under the following circumstances :—

- (i) when the previous wife is childless upto the age of 25 years;
- (ii) When there is no male issue from the previous wife till her 30th year or when the previous wife who is below 30 does not conceive for ten years after her past conception;
- (iii) in cases of judicial separation by wife and when there is no male issue.

(Note : In the case of Goa, previous wife's consent is required for the cases mentioned in (i) and (ii) above).

(b) District of Daman :

4.50 According to the Code of Customs and Usage of Non-Christian inhabitants of Daman, the male individuals are allowed to have many wives but Bramos of Modd Caste cannot have more than two wives.

However, there is no polygamy among Dhobis, Morai-Machines, Barbers, Capris, Salvia, Betelas, Porobias and Bramos except those belonging to Teloquia and Modd caste.

(Note : For an individual to marry or re-marry more than twice—when his previous wives are living, an express previous consent of all of them is required which shall be drawn by the 'Chief of Rancho' or by the Notary Public in the Presence of four witnesses).

4.51 Judicial justification of any of the circumstances mentioned above is a condition precedent for polygamy.

4.52 In our opinion, the continuation of such diverse Laws contradictory to our social policy, in these territories is totally unjustified. *We recommend therefore, the immediate replacement of these laws by the Hindu Marriage Act 1955.*

II Age Of Marriage

1. Legal Provisions :

4.53 Another major social evil which was sought to be curbed by legislation is child marriage. The disastrous effects of such marriages have been discussed already. One of the few areas where our social reformers had taken the initiative, even in the 19th century, was to curb this evil by legislation. The first legislation was the Civil Marriage Act¹ which laid down the age of marriage to be 14 years. But as only a very small section of the people married under this Act, the problem continued.

4.54 One of the adverse consequences of child marriage, as realised by the reformers, was early consummation, with disastrous effect on the health of the young wives and their children. An effort was made in 1891 to prevent early consummation by the Age of Consent Act which prohibited consummation before 12 years. Due to lack of publicity and propaganda, there was no impact of this provision. In 1925, the Age of Consent was raised to 13. This was the forerunner of the Sarda Act of 1929.²

1. Civil Marriage Act 1872.

2. Child Marriage Restraint Act 1929 amended in 1949. The minimum age for males was 18 years and for females 14 years, amended afterwards to 15 years. It may be noted that similar measures were enacted in the States of Mysore (1894), Baroda (1904) and Indore (1918), long before the law in British India.

change, is not sufficient by itself to fight against deep rooted prejudices and traditional practice made the legislators compromise by leaving the validity of child marriage untouched but making such practice a penal offence. Parents of children, those 'performing, conducting or directing' as also the adult bridegroom, were all liable to punishment in varying degrees. The Act was further amended but left untouched the structure of the earlier Act.³ The impact of this legislation and the present position regarding child marriages have been discussed already.

4.56 Apart from the Sarda Act, the various personal laws have their own minimum age of marriage. Not only do they vary in regard to the minimum age but also in the consequences of violation of the law.

4.57 The Hindu Marriage Act lays down as one of the conditions, the completion of 18 years and 15 years by the bride-groom and the bride respectively.⁴ Though passed in the post-independence era, the Act remains silent about the effect on the validity of the marriage and continues the earlier penal policy in cases of violation. Most writers hold the view that the validity of the marriage is not affected and this is also supported by judicial decisions.⁵

4.58 The Parsi Marriage and Divorce Act 1936⁶ on the other hand, lays down that no suit shall be brought to enforce a marriage between two Parsees or any contract connected with the marriage, if at the date of the institution of the suit the husband has not completed the age of 16 years and the wife 14 years. The Christian Marriage Act, 1872 provides that for a valid marriage under the Act, the age of the male shall exceed 16 years and that of the female 13 years.⁷ For a valid marriage under the classical Muslim Law the parties should not be minors,⁸ that is, the parties should have attained puberty. Puberty is presumed in the absence of evidence to the contrary, at 15 and 19 in the case of girls and boys respectively.⁹

4.59 Only the Special Marriage Act, 1954, a post-independence legislation which provides for a secular marriage irrespective of the religious affiliation of the parties, contemplates the solemnisation of marriage between adults under its provisions, as it fixes the minimum age at 21 and 18 for males and females respectively.¹⁰

4.60 The legal position noted above brings forth an important feature, namely, a lesser age of marriage is prescribed in the case of girls. No doubt throughout the world, the laws generally provide for a lesser age in case of girls. For example, in the U. S. A. only eleven States prescribed the same minimum age for boys and girls. The remaining thirty-nine states permit girls to be married at a lower age than boys.¹¹ As pointed out by Konowitz: "It (early marriage for women) can lead to premature removal from socially productive enterprise or lost opportunities."¹²

4.61 When the legal age of marriage in case of a female is below the age of discretion she cannot be expected to form an intelligent opinion about her partner in life. The policy of law which permits the marriage of a girl before she is physically and mentally mature is open to serious question. As reported by the Pushpaben Committee, child marriage is one of the significant factors leading to the high incidence of suicide among young married women in India.¹³ Therefore, increasing the marriage age of girls to eighteen years is desirable.

3. In the amended Act, the punishment was slightly increased from one month's imprisonment to three months for parents, and guardians as also for the adult marring a child. A person between the age of 18 years and 21 years marrying a child also becomes liable for imprisonment.

4. Sec. 5 (iii)

5. *Mst. Mahari v. Director and Consolidation* 1969. *All L. J.* p. 63; Mulla—*Principles of Hindu Law*—p. 634 (1970); Derrett, *An Introduction to Modern Hindu Law*—p. 157 (1963)

6. Sec. 38

7. The Christian Marriage Act, 1872, Sect. 60

8. "Essential according to Muhammedan Law that the husband should be capable of giving a valid consent.. consent of a Muslim girl essential" Rahman, A—*Institutes of Mussalman Law*, P. 4

9. Tyabji, *Muslim Law* Sec. 27 (1970)

10. The Special Marriage Act, 1954 Sec. 4 cl. (c)

11. Konowitz, *Women and the Law*, p. 10 (1970)

12. *Ibid.* p. 11.

13. *Report of Suicide Enquiry Committee*, Government of Gujarat, 1964, p. 62. Hereafter referred to as the Pushpaben Committee.

4.62 In this context it is necessary to point out an anachronism that exists in the Muslim Law that governs some sects. After attaining puberty, a Muslim male in all sects and a Muslim female belonging to the Hanafi and Ithana Ashari Shirte sects can marry without a guardian. But "a Maliki, Shafi, or Daudi or Sulaymani Bohra virgin cannot marry without a guardian and her only remedy is to change over to the Hanafi School and marry according to its tenets."¹⁴

4.63 In two recent decisions, viz. Muhammad Hazi Kammu vs. Ethiyumma¹⁵ and K. Abubukker vs. Marakkar¹⁶ (The Kerala High Court) struck a different note which mitigates this hardship. The parties in both cases were Shafis. In Abubukker's case, the mother who was divorced, sought the consent of her ex-husband to the daughters' marriage which he refused. On the marriage being solemnized, the father filed a suit for a declaration that the marriage was invalid as his consent was not obtained. The lower Court declared the marriage to be invalid even though the girl was already pregnant. Reversing the decision of the lower Court, Justice Pillai stated that under the Maliki and Shafi law the marriage of an adult girl is not valid unless her consent is obtained, and communicated through a legally authorised wali (guardian). As the father refused his consent, she could constitute any other relation or Kazi (in this case the Kazi) to act as her agent. *In our opinion a change in the law to remove the existing disability in these sub-schools and to bring them in conformity with the Hanafi law is necessary.*

2. Aspects relating to Prevention of Child Marriages :

4.64 As mentioned earlier the policy of the Child Marriage Restraint Act or other statutes is not to invalidate child marriages but to punish their solemnization. The offences under the Act are, however, non-cognizable, and no woman is punishable with imprisonment.¹⁷

4.65 There are large scale violations of the Act particularly in the rural areas. The non-cognizable character of the offence is a serious hindrance to the effective enforcement of this law. The State of Gujarat amended the Child Marriage Restraint Act by making it a cognizable offence. Provisions have also been made for the appointment of a Child Marriage Prevention Officer. These changes have been welcomed by the Pushpaben Committee.¹⁸ *We recommend that all offences under the Child Marriage Restraint Act should be made cognizable, and special officers appointed to enforce the law.*

4.66 Another effective approach to this problem is to render such marriages void. But in the present social and economic conditions such a rigorous measure may create more problems than it seeks to solve. We suggest, therefore, that it should be envisaged as a future goal.

4.67 As immediate measures to deter child marriages and to alleviate their consequences we suggest the following :—

- (a) to provide the girl the right to repudiate the marriage on attaining majority on lines similar to the "option of puberty" under Muslim Law;

Note : A Muslim girl married during her minority¹⁹ is entitled to a dissolution of marriage if the following facts are established : (i) that she was given in marriage by her father or other guardian before she attained the age of 15; (ii) that she repudiated the marriage before she attained the age of 18; (iii) that the marriage was not consummated.²⁰

4.68 *In our view the right to repudiate the marriage on attaining majority should be made available to girls in all communities whether the marriage was consummated or not.*

- (b) A general legal provision analogous to section 38 of the Parsi Marriage and Divorce Act, 1865 which provides that "no suit shall be brought in any court to enforce any marriage between Parsees, or any contract connected with or arising out of any such marriage, if, at the date of the institution of the suit, the husband

14. Fyzee, *Outlines of Muhammadan Law* p. 201 (1964)

15. 1967 K. L. T 913

16. A. I. R. 1970 Kerala 277

17. The Child Marriage Restraint Act, 1929 Sec. 6 (1) Sch. II of Cr. P. C. Last two entries read with sec. 4

18. Pushpaben Committee, *Supra* n. 13 p. 63

19. The age of majority under the Muslim Law is the completion of 15 years. The Indian Majority Act, 1875 is not applicable to matters relating to marriage, dower, divorce and adoption.

20. The Dissolution of Muslim Marriages Act, 1939, Sec. 2 (vii)

tion of the rule relating to age of the parties (completion of 18 years and 15 years in case of males and females respectively) though not invalid *per se* will not be registered. Under article 99 of the Code such a marriage will not be recognised by the Court for the purpose of granting any relief, except a claim relating to legitimacy of issues.²¹

4.69 *We recommend legislation prohibiting courts from granting any relief in respect of a marriage solemnized in violation of the age requirements prescribed by law unless both the parties have completed the age of 18 years.*

3. Compulsory Registration of Marriages :

4.70 Compulsory registration of marriages operates as an effective check on child and bigamous marriages and also offers reliable proof of marriage. It ensures the legitimacy and inheritance rights of children. Section 8 of the Hindu Marriage Act, 1955, enables the State Governments to provide for compulsory registration of marriages, and any person contravening the rule may be punished with a fine which may extend to twenty-five rupees. However it has been stated that failure to register a marriage will not affect its validity. Laws which provide for the voluntary registration of Muslim marriages are in force in the States of Assam, Bihar, Orissa and Bengal.²²

4.71 Among the Parsees and Indian Christians the registration of marriages is compulsory.²³ Registration is also compulsory for marriages solemnised under the Special Marriages Act, 1954. Section 16 of this Act permits voluntary registration of marriages celebrated under other laws. The figures given below illustrate that the appeal of this secular law, though it ensures better legal protection to all parties, is still limited to a very small minority. Neither has the permission for voluntary registration attracted much response.

Number of marriages registered under the Special Marriages Act 1954 :

	<i>Bombay</i>	<i>Rajasthan</i>	<i>Delhi</i>
1968	601	11	148
1969	621	8	194
1970	766	13	229
1971	705	11	235
1972	816	6	212

Number of marriages celebrated under other laws but subsequently registered under Section 16 of the Special Marriages Act.

	<i>Bombay</i>
1968	19
1969	18
1970	43
1971	36
1972	26

4.72 The ultimate object should be to recognise registration as the sole and conclusive proof of marriage, irrespective of the religious rites under which it was solemnised. It may be mentioned here that India has neither signed nor ratified the United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage.²⁵

21. The Parsi Marriage and Divorce Act, 1936 Sec. 38

22. Mahmood, Tahir *Family Law Reform in the Muslim World* p. 50 (1972).

23. The Assam, Muslim Marriages and Divorces Registration Act, 1935; The Bengal Muhammadan Marriages and Divorces Registration Act, 1876 (as applied in the state of Bihar); The Orissa Muhammadan Marriages and Divorces Registration Act, 1949; and The West Bengal Muhammadan Marriages and Divorce Registration Act, 1876.

24. Under section 6, Parsee Marriage and Divorce Act, 1936; and Sections 59 and 62 of the Indian Christian Marriage Act, 1972.

25. U. N. Doc. A/Res./1953 'XVII' (1962). For the background and details of the Convention see Sivaramayya Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage—1962—with special reference to India J. I. L. I. Vol. 1962

Explaining the position of India on ratification, the Indian delegate stated "the Convention would impose an obligation to introduce legislation, and since that might not be feasible at the present time, he must reserve his Government's position on the question of ratification."²⁶

4.73 We regret that for over a decade no attempt has been made to introduce legislation to implement the objects of the U. N. Convention. This attitude indicates a casualness and lack of concern on matters affecting the status of women. *We recommend that registration should be made compulsory for all marriages.* We have a clear precedent for a uniform measure in the Registration of Births and Deaths Act.

III. DOWRY

4.74 The dimension and ramifications of the dowry system in its present form have been discussed in the previous Chapter.

4.75 We are compelled to record our finding that the Dowry Prohibition Act 1961, passed with the ostensible purpose of curbing this evil, if not of eradicating it, has signally failed to achieve its purpose. In spite of the rapid growth of this practice, there are practically no cases reported under the Act. During its tours of all the States, the Committee was informed of only one case that was pending before the court in Kerala, in which the father had filed the complaint only because of the ill-treatment meted out to his daughter.

4.76 During the debate on the Dowry Prohibition Bill, one MP observed, "But I feel the whole problem will be solved — very easily and more quickly, not by legislation, but by rousing social conscience. As soon as our women get economic opportunities and economic freedom, as soon as avenues of employment and other opportunities are opened to them, as soon as they become independent of their families, possibly there would not be any occasion for this law to operate."¹

4.77 The eradication of this evil by rousing social conscience is seemingly an attractive approach. The Committee's findings, however, indicate that there is hardly any evidence of social conscience in the country today. In Indore, at a fairly large meeting, the Committee was told of the case of a girl who was burnt in the legs and in the back by her in-laws as she had not brought an adequate dowry. The acceptance of this situation was indicative of society's indifference to this social evil. No one at the meeting mentioned the need to report the case to the police or even of socially boycotting the family. Many such cases were brought to our notice, but nowhere did we hear of any social censure being exercised.

4.78 An increase in economic freedom and job opportunities for women, to the extent that the practice of dowry becomes obsolete, under the existing economic conditions, will be a very long process. The educated youth is grossly insensitive to the evil and unashamedly contributes to its perpetuation. In our opinion, therefore, a stringent enforcement of the policy and purpose of the Act may serve to educate public opinion better. *A very small but significant step could be taken by the Government, by declaring the taking or giving of dowry to be against the Government Servants Conduct Rules.* Such a lead was given earlier to prevent bigamous marriages and giving or taking of dowry should be similarly dealt with.

4.79 The major cause for the failure of the Dowry Prohibition Act, 1961 is that an infringement of the provisions of the Act is not made a cognizable offence. That the offences under the Act should be made cognizable was in fact suggested during the debate in Lok Sabha.²

But the offence was not made cognizable, as it was apprehended that this might result in the harassment of citizens by the police and lead also to undue invasion of the individual's right of privacy.

4.80 In our opinion the policy of making the offence non-cognizable completely nullifies the purpose of the Act as it is unrealistic to think that the father of a girl who had paid the dowry (and who alone is in a position to adduce evidence of the fact that dowry was stipulated and given) would prefer a complaint against the interests of his daughter after her marriage. *We recommend, therefore, that the offences, under the Act, should be made cognizable.* We are

26. U. N. Doc. A/C3/SR. 1148 (1961)

1. Shri Hem Barua — 36 Lok Sabha Debates, Column 3476 (1959).

2. By Smt. Parvati Krishnan — 36 Lok Sabha Debates, Col. 3703 (1959).

fortified in our conclusion by the recommendation of the Panchsheel Committee. To overcome the fears regarding harassment by the police and encroachment on the right of privacy; it is suggested that the enforcement of social laws like the Dowry Prohibition Act, the Child Marriage Restraint Act, should be entrusted to a separate administration with which social workers and enlightened members of the community should be associated.

4.81 In addition, two ancillary provisions should be incorporated in the Dowry Prohibition Act, 1961. It has been pointed out that one of the 'major loopholes' in the existing legislation is that anything is allowed in the name of gifts and presents.⁴

Therefore, any gifts made to the bridegroom or his parents in excess of Rs. 500/- or which can be so used as to reduce his own financial liability should be made punishable.

4.82 The practice of displaying the dowry by parents of the bride or the bridegroom, as discussed earlier, is prevalent in some parts of India. This naturally tends to perpetuate the practice as others follow suit. To curb this evil we recommend legislation on the lines of the West Pakistan Dowry (Prohibition of Display) Act 1967⁵ which penalises such display.

4.83 We suggest that an evaluation of the impact of the amended Dowry Prohibition Act should be made after five years. It will help in plugging loopholes which facilitate the evasion of this law. The next step should be to set a ceiling even on the gifts that may be made to the bride. This will help to improve the situation further because we have found that gifts given to the bride are often only a guise for dowry since generally she has little or no control over them.

IV DIVORCE

4.84 A monogamous marriage without the right of divorce would cause great hardship to both parties to the marriage. The concept of 'union for life' or the sacramental nature of the marriage which renders the marriage indissoluble has gradually been eroded and through legislation the right of divorce has been introduced in all legal systems in India, but the same variations and unequal treatment of sexes characterises this branch of law also.

4.85 According to the Census of 1971¹, the total number of divorced or separated women in the country is estimated to be 8,70,700; of which 7,43,200 are in the rural areas and 1,27,500 in urban areas. The ratio of divorced or separated women is 1630 per thousand males². The table below indicates the relative percentage of divorced or separated men and women to the total male and female population in 1961 and 1971. It is clear that the proportion of women who remain in this state is higher than men, in both rural and urban areas.

PERCENTAGE OF DIVORCED AND SEPARATED PERSONS

	1961			1971		
	Rural	Urban	Total	Rural	Urban	Total
Males	0.43	0.22	0.39	0.21	0.12	0.19
Females	0.53	0.43	0.51	0.35	0.25	0.33

Source : Country Statement—submitted to the World Population Conference, Bucharest (Rumania) 19–30 August 1974—Government of India, 1974.

Note : 1971 figures are based on 1 per cent sample data.

A survey undertaken by the Census in 1961 in 587 selected villages with a sample of 1,33,775 marriages covering a period of 50 years, had indicated wide acceptance of divorce by the village community and some variations of incidence among the religious communities. Incidence of divorce was highest among the Muslims (6.06%), followed by Hindus (3.21%). Among the Buddhists it was 3.07%, among the Jains 1.68% and among Sikhs 0.91%. The

3. Report of the Suicide Enquiry Committee, Govt. of Gujarat 1964, p. 47.

4. A Persistent Evil, Editorial, The Sunday Standard, New Delhi, December 10th, 1972.

5. "Whosoever intentionally displays or exhibits—any presents in form of cash, ornaments, clothes, or other articles made at the time, or immediately before or after marriage, to either party to the marriage shall be punished with an imprisonment which may extend to one year or with a fine which may extend to five thousand rupees."

1. Estimated from 1% sample data — Census of India 1971.

2. Bose, Ashish — Demographic Profile of Indian Women (unpublished).

incidence of divorce among Christians was considerably lower (0.41%)³. The causes for divorce show that adultery and barrenness are the commonest grounds for divorce in most of the villages studied. Extreme poverty is also found to be cause for divorce. In Rajasthan, sexual incompatibility and incapacity are recognised as grounds for divorce.⁴

Hindu Law

4.86 According to traditionalists, divorce was unknown in Hindu Law⁵. Even today divorce is not a socially accepted norm among many sections.

“We can take judicial notice of the fact that even today considerable sections of the Hindu society look with disfavour on the idea of dissolving a marriage⁶.”

Polygamy, without the right of divorce, caused, in many cases, tremendous hardship.

Customary Divorce :— Contrary to the general notion regarding the indissolubility of Hindu marriages, a large section of Hindus among the lower castes have traditionally practised divorce. These customary forms of divorce were recognised, both socially and judicially⁷. The usual customary forms are :

- (a) by mutual consent ;
- (b) unilaterally—at the pleasure of the husband or by the abandonment of the wife ;
- (c) by deed of divorce (Char—chitti) ;

(a) *by mutual consent* : The custom of obtaining divorce by mutual consent is prevalent among certain castes in Bombay⁸, Madras⁹, Mysore¹⁰ and Kerala.¹¹ In Madhya Pradesh¹² it has been held that divorce by mutual consent is a valid custom among the Patwas of that State. A customary form of divorce by agreement (chuttam—chutta) amongst the Barai chaurasiyas of U.P. has been declared valid by the Allahabad High Court.¹³ These are only a few illustrations to indicate the existence of divorce by mutual consent.

(b) *unilateral divorce* : According to the custom prevailing in Manipur (Khaniaba), it has been stated that a husband can dissolve the marriage without any reason or at his pleasure¹⁴. Among the Rajput Gujaratis in Khandesh, and in the Pakhali Community marriage is dissolved if the husband abandons or deserts the wife. Among the Vaishyas of Gorakhpur in Uttar Pradesh a husband may abandon or desert his wife, and dissolution takes place even without reference to the caste tribunal¹⁵.

(c) *Divorce by Deed* : This form is prevalent among certain castes in South India, also in Himachal Pradesh and the Jat community. Recently the Supreme Court has upheld a deed executed by the husband divorcing his wife.¹⁶

4.87 Usually customary divorces are through the intervention of the traditional Panchayats or caste tribunals. Therefore, in States where this has not been customary, the courts have not permitted Panchayats to take upon themselves the right to dissolve a marriage. Once the custom is proved, however, the courts will not interfere.

4.88 The courts have exercised a lot of judicial scrutiny and discretion in upholding or rejecting such customary divorce practices. In doing so they have applied the strict test for the validity of such customs. When the existence of a custom was not proved, or where the

3. Position of Divorce in India — Census of India, 1961.

4. Village Survey Reports — Census of India, 1961.

5. “Marriage under Hindu Law ... a sacrament ... the union is indissoluble ... the union is a sacred tie and subsists even after the death of the husband” *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*, 28 Cal. 751, 758.

6. S.V.R. 1968 Del. 79.

7. Hindu Marriage Act 1955 — Section 29(2) has continued this recognition.

8. *Bannerjee* — Hindu Law of Marriage and Stridhana (1913) p. 189.

9. *Sankaralingam V. Subban*, ILR 17 Mad 479.

10. *Sivalingaiah V. Chowdhamma A I.R.* (1956) Mys. 17.

11. *Ayyappan V. Paruketty*, A.I.R. (1917) Ker. 44.

12. *Smt. Premanbai V. Channulal Punao*, AIR (1963) M.P. 57.

13. *Madho Prasad V. Shakuntala A.I.R.* (1972) All. 119.

14. *Payam Liklai Singh V. Molranthem Malpek Singh A.I.R.* (1956) Man. 18.

15. *Gopi Krishna Kasaudhan V. Musammat Jaggo* 63 I.A. 295 (1936).

16. *Gurdit Singh V. Shrimati Angrez Kaur*, A.I.R. (1968) S.C. 142.

4.93 Whenever conjugal rights have come into open conflict with the woman's right of equal opportunity in education or employment, the attitude of the judiciary has often been rather ambiguous. Instead of guiding the conflicting parties towards a rational adjustment to the process of social change, the judiciary has either evaded the issue or thrown its weight on the side of the traditional view of the husband's authority. Two illustrations will suffice to demonstrate this tendency :—

(a) A husband's demand for his wife to resign her job as a teacher in a city away from his place of employment, to join him, was upheld by the Punjab High Court, which ruled that it was the duty of the wife to remain under the 'roof and protection and submit obediently' to the authority of the husband²⁴.

(b) In a similar case, the Allahabad High Court took a step forward by opining that the concepts of protection and society are "inelastic and rigid rules which cannot be interpreted in the context of present day conditions and needs of society... In view of the altered social and economic conditions both husband and wife may think it necessary to work and contribute to the family chest." The Court, therefore, conceded the right of deciding the question to the wife where "in cases of economic stress... for the sake of the family and children" the wife genuinely thinks it is necessary for her to work²⁵. The judgement, while conceding the right in cases of genuine economic necessity, totally evades the issue of the individual woman's right to decide whether to work or not.

4.94 *We are of the opinion that difference in the place of work should not be regarded as a ground for a case of desertion or restitution of conjugal rights.*

4.95 *Cruelty and desertion* : Cruelty and desertion have not been made grounds for divorce though they are recognised as grounds for a judicial separation²⁶. It, therefore, follows that in these cases the innocent party to the marriage, against whom there has been cruelty, or who has been deserted, has to wait for two years before he or she can get a divorce²⁷. Uttar Pradesh has given the lead in this and amended their law to make these grounds for divorce²⁸. *In our opinion these should be added as grounds for divorce in the Hindu Marriage Act so that persons are not compelled to follow the present circuitous route and undergo the expense of going to court twice.*

Muslim Law

4.96 Under Muslim Law a husband has an absolute and unlimited right to repudiate the marriage at his will. This is known as Talaq. A Muslim wife has no such right to dissolve her marriage. Unwritten and traditional law tried to ameliorate her position by permitting her to seek dissolution under the following forms :

- (a) *Talaqi Tafwid* : This is a form of delegated divorce. According to this the husband delegates his right of divorce in a marriage contract which may stipulate that *inter-alia* on his taking another wife the first wife has the right to divorce him. The courts have upheld these pre-nuptial and post-nuptial agreements as not opposed to public policy nor against the spirit of Muslim Law²⁹. The Assam High Court has strengthened this right by declaring that such a power of Talaq given to the wife is irrevocable³⁰.
- (b) *Khul* : This is a dissolution by an agreement between the parties to the marriage, on the wife's giving some consideration to the husband for her release from the marriage tie. The terms are a matter of bargain and usually takes the form of the wife giving up her dower.
- (c) *Mubarrat* : This is divorce by mutual consent³¹.

24. Tirath Kaur v. Kirpal Singh A.I.R. (1964) Punj. 28.

25. Shanti Nigam v. R.C. Nigam (1971) A.L.J. 67.

26. Sec. 10 (i) (a) and (b) Hindu Marriage Act.

27. Sec. 13 (i) VIII and IX.

28. Hindu Marriage Uttar Pradesh (Sanshodhana Adhiniyam) of 1962.

29. Saimuddin v. Latifunnisa—I.L.R. (1918) 46 Cal. 141; Sadiqui v. Ataulah (1933)—Lah. 685.

30. Saifuddin v. Soneka, A.I.R. (1955)—Ass. 153.

31. Fyzee—*Outlines of Muhammedan Law* 1964 pp. 142-155

had refused the wife the right to dissolve her marriage on the ground of non-payment of maintenance. The Shafi and the Maliki Laws, however, allowed the wife to obtain divorce on this ground.³²

4.97 *Dissolution of Muslim Marriages Act, 1939* : This Act took advantage of the law as enunciated by the Maliki and Shafi Schools³⁴ and recognised the right of a wife to dissolve the marriage on the following grounds³⁵.

- (i) that the whereabouts of the husband have not been known for a period of four years ;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years ;
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards ;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years ;
- (v) that the husband was impotent at the time of marriage and continues to be so;
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years; provided that marriage has not been consummated;
- (viii) that the husband treats her with cruelty...
- (ix) on any other ground which is recognised as valid for the dissolution of marriage under Muslim Law.

Muslim women have benefitted by the Act. The provisions that have been resorted to most frequently are the 'option of puberty' and failure to provide maintenance by the husband.

4.98 *Option of Puberty* : According to traditional Muslim law, when a minor girl had been given in marriage by the father or the father's father, the marriage was valid. She could, however, repudiate the marriage if she could show that the guardian had acted negligently or fraudulently. But if the minor had been given in marriage by any other guardian, she had the right to repudiate the marriage on attaining puberty.³⁶ The present Act has modified the traditional law permitting her to exercise the right irrespective of who was the guardian who gave her in marriage. The courts in India have interpreted this right very liberally, often invoking the principles of equity and justice in favour of the girl.³⁷ They have not rigidly applied the letter of the law in regard to the time when this right could be exercised³⁸. It has been held that a minor wife did not lose her right to repudiate the marriage within a reasonable time after she came to know of her right and not necessarily when she attained puberty. In such cases they have even waived the condition of non-consummation when such consummation was by force³⁹ or before she attained the age of 15.⁴⁰

4.99 *Right of the wife to dissolve the marriage on ground of failure to maintain* : This right has been interpreted in two ways. One group of decisions, basing itself on the traditional 'fault theory', has denied the right to a wife to divorce where her conduct was such as to

32. Hedaya—142, Baillie 1, 447.

33. Ameer Ali—*Mohammadan Law* 1911, vol. 2 pp. 416-521

34. See the statement of objects and reasons, Gazette of India, Part V, 1938, p. 36.

35. See Sec. 2 of the Dissolution of Muslim Marriage Act.

36. Baillie, 1 p. 550;—Tyabji Muslim Law p. p. 91-(1968)

37. *Aziz Bano v. Mohammad* (1925) 47 I.L.R. All. 823.—In this case a minor Shiah Girl had been given in marriage by her father to a Sunni husband. She was allowed to repudiate her marriage as it was contrary to all rules of equity and justice to force such a marriage on her.

38. *Musammat Ayesha v. Mohammad Yunus* (1938) Pat. 604.

39. *Abdul Karim v. Amina Bibi* (1935) 59 Bom. 426

40. *Gulam Sakina v. F. S. A. Baksh* (1950) Lah. 45

absolve the husband from his duty to provide maintenance.⁴¹ The other group has tended to uphold the right, irrespective of the wife's conduct.⁴²

4.100 These two groups of decisions clearly indicate that legislation alone cannot eliminate rigid traditionalism, with its desire to preserve the status quo: Without supporting judicial interpretation, even the policy of the law is negated. The decision of Justice Krishna Iyer is, therefore, significant as he has focussed his observations on the right of the Muslim wife to divorce when her husband has failed to provide her maintenance for two years. He has used his erudition to support the theory of dissolution when the marriage has broken down, irrespective of the relative faults of the parties.

"There is no merit in preserving intact the tie of marriage when the parties are not able to and fail to live within the bonds of Allah, that is to fulfil their mutual marital obligations, and there is no desecration involved in dissolving a marriage which has failed. The entire emphasis is on making the marital union a reality and when this is not possible..., the Quran enjoins a dissolution... This secular and pragmatic approach on Muslim law of divorce happily harmonises with contemporary concepts in advanced countries."⁴³

We recommend that the right of the wife to divorce, on the failure of the husband to maintain her, irrespective of her conduct which may be the main or contributory cause, should be clearly spelt out.

4.101 Muslim Law had always recognised that in some cases the wife may be able to get a divorce. To the uncodified law the Dissolution of Muslim Marriages Act 1939 has added further grounds. But the power of the husband to pronounce talaq unilaterally remains, and has in no way been curtailed either judicially or through legislation. As long as this absolute and unlimited right remains, the position of the Muslim wife will remain insecure and her status cannot be raised. We totally disagree with the view that with Justice Krishna Iyer's judgement⁴⁴ and her right to obtain divorce by 'Khul', a Muslim woman's rights "are brought into approximation with those of the man."⁴⁵ While the judgement is undoubtedly a great step forward, it has to be remembered that she still has to wait for two years without maintenance before getting her release. Also, a right to buy her release, as provided in the Koran can hardly be regarded as approximating the unilateral right of the man.

4.102 Legislation is the only instrument which can bring the Muslim divorce law into line with not only the needs of society but with the prevailing law in other Muslim countries. Turkey and Cyprus have completely prohibited unilateral divorce, while in Tunisia, Algeria, Iraq and Iran the husband has to apply to a court. In Pakistan Legislation has restrained the freedom of the husband to divorce his wife. He has to inform the Arbitration Council which will try and bring about a reconciliation. The husband's pronouncement of 'talaq' without informing the Arbitration Council has been declared to be an offence.⁴⁶

4.103 *We recommend immediate legislation to eliminate the unilateral right of divorce and to introduce parity of rights for both partners regarding grounds for seeking dissolution of a marriage.*

Christian Law

4.104 All Christians are governed by the Indian Divorce Act, 1869⁴⁷ Under the Act both husband and wife can obtain a divorce, but there is a great difference between the rights of the husband and the wife. The husband can obtain a divorce if the wife has committed adultery. The wife can seek a divorce on the following grounds⁴⁸ :—

- (a) husband's conversion from Christianity and marriage with another woman;
- (b) incestuous adultery;
- (c) bigamy with adultery;

41. Rabiakhatoon v Mukhtar Ahmed, AIR (1966) All. 548; Jamila Khatun v Kasim Ali, AIR (1951) Nag. 273; Bai Fastima v. Mumna Miranji, AIR (1957) Bom. 453;

42. Mst. Nur Bibi v. Pir Bux, AIR (1950) Sind. Yusuf v. Sauramma, AIR (1971) Kerala 261.

43. Ibid.

44. Ibid.

45. Latifi Danial—Outstanding decision on Muslim Personal Law.

46. Mahmood Tahir,— *Family Law Reform in the Muslim World* pp. 272, 298.

47. Though the Catholic Church does not recognise divorce, the Indian Law makes no distinction between different denominations in this regard.

48. Section 11 of the Act.

- (e) rape; sodomy or bestiality;
- (f) adultery with cruelty;
- (g) adultery with desertion.

Thus the wife has to prove two offences by the husband before she can obtain a divorce.

4.105 The law is so outdated that the need for revision has been felt for quite some time. The Government, realising the need for reform, referred the matter to the Law Commission in 1960. The Commission prepared a Draft Bill. The Christian Marriage and Matrimonial Causes Bill, 1960, contains almost all the grounds included for divorce under the Special Marriage Act, 1954, such as desertion, cruelty, adultery, leprosy, venereal disease, conversion to another religion, and willful refusal to consummate the marriage.⁴⁹ Further, either party to a marriage can also obtain a decree of judicial separation on any of the grounds mentioned for divorce.

4.106 We regret that in spite of these preparatory steps, no action to enact this measure has been taken by the Government so far and *recommend that no further time be lost to reform and amend this law on the lines suggested by the Law Commission.*

Parsee Law

4.107 The Parsees are governed by the Parsee Marriage and Divorce Act, 1936. Both the parties to the marriage can initiate divorce proceedings on the following grounds :—

- (a) continuous absence for 7 years without information to those persons who would naturally have heard of him or her;
- (b) non-consummation;
- (c) insanity;
- (d) adultery, bigamy, rape or an unnatural offence;
- (e) causing grievous hurt or venereal disease;
- (f) imprisonment for 7 years or more;
- (g) desertion for three years;
- (h) non-resumption of co-habitation following a decree of judicial separation or restitution of conjugal rights;
- (i) conversion.

(In addition to these common grounds, the wife can obtain a divorce if she has been compelled by her husband to prostitution. The husband has the right to dissolve the marriage if the wife was pregnant by some other person at the time of marriage.)

Jewish Law

4.108 The Jews in India are not governed by statutory law but by their customary law. Originally, the ghet was the only form of divorce. In India, however, dissolution of the marriage can be done through the court on grounds of adultery or cruelty. The marriages are generally monogamous excepting in certain specified cases. Because they are a small minority, no effort has been made to codify or reform this law. *We feel that this should be undertaken now and the principle of monogamy as well as the normal grounds for divorce as provided in the Special Marriage Act should be adopted for this community also.*

4.109 *Special Marriage Act, 1954* : This Act provides for a secular form of marriage which can be taken advantage of by all persons in India irrespective of their religious faith. Persons who marry under this Act will be governed by the provisions of the Act and not by their own personal law, with respect to their matrimonial rights and remedies.

4.110 The grounds on which divorce can be obtained by either party to marriage are adultery, desertion for a period of three years, cruelty, unsound mind for 3 years, leprosy, venereal disease, continuous absence for 7 years without information to those persons who would naturally have heard of him or her, non-resumption of cohabitation for 1 year following a decree of judicial separation or restitution of conjugal rights. In addition to these, the

49. 15th Report of the Law Commission of India (1960). p. 65

wife can obtain divorce on the ground of rape, sodomy or bestiality.⁵⁰ A special feature of this act is that the parties can also dissolve the marriage by mutual consent.⁵¹ All that the parties need do in order to obtain divorce under this provision is to present a petition to the court that they have been living separately for a period of one year or more and that they have not been able to live together and that they have mutually agreed to dissolve the marriage.

4.111 *Conversion as a ground for divorce* :—In the field of personal law and particularly in divorce, the existence of various legal systems create a peculiar situation. The Constitution recognises the right freely to profess, practise and propagate religion.⁵² Conversion, therefore, from one faith to another is an individual's right and the motive for the conversion is or should be beyond judicial scrutiny. But when such conversion impinges on the right of another person, the question poses a problem. In India today as a legacy of the multiple systems, a person by his or her conversion also acquires the right to be governed by a different set of laws. Even after the Constitution, the codified Hindu Marriage Act has mentioned conversion as a ground for divorce. Is conversion then to be treated as a matrimonial wrong? Under statutory Muslim Law a woman converted to a faith other than Islam or renouncing Islam has only the right to divorce if the husband has committed a matrimonial wrong⁵³—conversion per se does not affect the validity of the marriage and is in no way a bar to its continuance. On the other hand, a man converted to Islam for another religion has the right to be governed by his new personal law, including the right to marry more than once. This is so even when his first marriage was a monogamous marriage. He is also entitled to claim that his new faith does not permit him to remain married to a Hindu and he can, therefore, proceed to divorce her by uttering 'talaq' three times. The Indian Divorce Act⁵⁴ does not recognise conversion as affecting the validity of the marriage unless it is followed by the marriage of the husband to another woman. The Converts' Dissolution Act⁵⁵ permits the convert to Christianity to dissolve the marriage provided the marriage has in effect broken down as a result of the conversion. It requires to be proved clearly that cohabitation has been discontinued because of the conversion.⁵⁶ Under the Parsee Law, conversion is a ground for divorce provided the suit is brought within 2 years. This thorny question is dealt with in many ways, but the problem remains of reconciling the right to freedom of religion with the possible impact of conversion on marriages. It has been suggested that the question of marital rights on conversion should be governed by principles of equity, justice and good conscience.⁵⁷ The other is that no converted person can, for a period of two years at least, be able to affect any marital rights by resorting to the new religion. While the second suggestion has the merit of deterring people from easy conversion to solve their matrimonial problems, *in our opinion conversion should not be a ground for divorce as it offers an easy way of evading matrimonial obligations.*

4.112 *Divorce by mutual consent* : Our review of the different laws governing divorce indicates that both customary laws and the secular law, i.e. the Special Marriage Act, 1954 recognise mutual consent as a ground for divorce, but this is conspicuous by its absence in any of the statutory laws governing different communities. On the other hand, the religious laws and judicial interpretations of them have generally tended to emphasise the fault theory, being particular to prevent the party guilty of a matrimonial wrong from obtaining a dissolution of the marriage. This leads often to the use of perjured evidence. As there is even today an indirect way of getting divorce by mutual consent, by registering one's marriage under the Special Marriage Act, after celebration according to religious rites, *we recommend that this ground should be recognised in all the personal laws so that two adults whose marriage has, in fact, broken down can get it dissolved honourably.*

4.113 *Prostitution as a ground for divorce* : The provision in the Parsee Marriage and Divorce Act, 1936 which enables a wife to obtain a divorce if her husband has compelled her

50. Sec. 27 of the Act.

51. Sec. 28

52. Article 25

53. Sec. 4—Dissolution of Muslim Marriages Act, 1939.

54. Sec. 10

55. Preamble 'legalise the dissolution of marriages of converts to Christianity deserted or repudiated on religious grounds by their wives or husbands'.

56. Sec. 4 & 5

57. *Ayeshabibi vs. Subodh Chakravarty* (1945) 49 C.W.N. 439 "the law which must be applied to the case is not any one personal law but the rule of justice, equity and good conscience."

58. With the exception of the following State laws :

(i) Madras Aliyasantana Act, 1949, (ii) Cochin Nayar Act, 1938, and (iii) Travancore Ezhava Act, 1925.

4.114 As a general principle, we recommend parity of rights regarding grounds for both husband and wife. This already exists in some of the personal laws, and in our view is essential to guarantee equality of status for both partners. It may be noted that the findings of our survey on this question show an overwhelming opinion in favour of parity. 74 per cent of the respondents (72.9 percent males and 74.37 per cent females) have stated that the grounds for divorce should be the same for both husband and wife⁵⁹.

V Adoption

4.115 "Adoption is the institutionalised practice through which an individual belonging by birth to one kinship group acquires new kinship ties that are socially defined as equivalent to the congenital ties. These new ties supersede the old ones either wholly or in part".¹ It is the act of a person who takes upon himself the position of a parent to a child who is not in law his own child.

4.116 The origin of the custom of adoption is lost in antiquity. It has, however, been recognised in India for centuries and is also recognised in other South Asian countries, such as Burma and Thailand.² Adoption forms the subject matter of personal law. In India the only personal law which recognises adoption in the true sense of the term is Hindu Law which regarded adoption as the 'taking of a son as a substitute' in case there is no male issue.

Muslim Law

4.117 Even though Muslim Law does not recognise adoption, in India previously the law had permitted this right to Hindu converts to Islam, who had enjoyed this right prior to their conversion.³ This customary right was, however, partially abrogated by the Shariat Act under which a Muslim could make a declaration that he and his sons would in future give up all customary rights including that of adoption and be governed by the Act.⁴

4.118 But the custom of adopting sons was in vogue in Arabia at the time of the Prophet Mohammad. The word *adiah* used in the Holy Quran means adopted sons.⁵ Justice Ameer Ali held that a family *Waqf* could be made not only for the benefit of descendants of the founder but also of dependents, which would include an adopted child who has resided with the settler as a dependent relation.⁶ The Lahore High Court held the word 'family' to include an adopted child who had resided with the settler as a dependent relation.⁷ All these clearly indicate that adoption was not unknown among Indian Muslims.

4.119 Islam never gave any special significance to an adopted son, as it does not to a natural son. Islamic religion, unlike the Hindu one, does not associate a son, or any other relative, with the performance of the last rites of a deceased Muslim whether male or female. It, therefore, does not recommend adoption of a son or a daughter for a person dying issueless, nor does it absolutely prohibit it. The Quranic verses having a bearing on adoption did not lay down a specific negative rule.⁸

Parsee Law :

4.120 For the Parsees, there is no law of adoption as such or is adoption recognised by custom. However, the widow of a Parsee dying issueless can adopt a *Palak* on the 4th day of the deceased's death, for the ad-hoc purpose of performing certain religious rites for the deceased. This adoption is only for a limited purpose and does not confer any proprietary rights on the *Palak*.

59. Vide Appendix I.

1. International Encyclopaedia of the Social Sciences. Vol. 1 p.9

2. The importance of adoption and recognition of the status of an adopted child is brought out by the fact that 23 "countries including Turkey and U.A.R. signed the Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions" at the 10th session of the Hague Conference of Private International Law 1964. Many European countries, such as the Federal Republic of Germany, Italy and U.K. have their own laws of adoption.

3. *Bai Machhai v. Bai Hirabai*, ILR (1911) 35 Bom-264. It should be noted that Muslim Law will not recognise any customary right which is against the tenets of Islam.

4. The Muslim Personal Law (Shariat) Application Act, 1937 amended 1943—Sec 3(c).

5. Latifi Danial, Adoption and the Muslim Law, JIII Vol. 16 p. 118 (1974).

6. Ameer Ali, *Mohammedan Law* p. 276 (1912)

7. *Mubarak Ali vs. Ahmad Ali*, A.I.R. (1935) Lahore 414.

8. There shall be for believers no bar to the wives of their adopted sons finally repudiated by the latter whose term of 'idda' has expired. Holy Quran IV : 23.

Christian Law

4.121 The institution of adoption is not known in Christian Law in India. If Christian parents have no issue and desire that some child takes that place, the only way open for them is to approach the Court under the Guardian and Wards Act and be appointed a legal guardian. This is the procedure being followed today also by foreigners who want to adopt Indian children. In such cases if the Court has given permission for the child to be taken out of the country, adoption according to foreign law (i.e. law of the guardian) takes place outside the country.

Hindu Law

4.122 The law relating to adoption has been amended and codified⁹ and brought in line with the principles of social justice. Previously the object of adoption was to ensure spiritual benefit by performing the last religious rites and also to continue the line.¹⁰ The devolution of property was regarded as of secondary importance. It was because of this basic approach to adoption that Hindu Law did not recognise the right of a Hindu to adopt girls as she could neither ensure spiritual benefit nor continue the line of her father.

4.123 With the passing of the Hindu Adoption and Maintenance Act 1956, the whole basis of adoption has been changed. The Act makes three clear departures from the previous law of adoption :—

(a) A Hindu can now adopt either a son or a daughter, since the religious purpose has given place to the secular idea of parents wanting a child.

(b) The husband can no longer give or take in adoption without the consent of the wife. In the case of an existing marriage, however, the primary right continues to be of the husband. The wife's right being confined to consent only, is in a sense, continuation of the 'Superior' right of a man which has been the running theme in Hindu Law.¹¹

(c) A woman can now adopt, if she is unmarried, widowed or divorced. Similar right is conferred on a married woman if her husband has completely and finally renounced the world, has ceased to be a Hindu, or has been declared by a Court to be of unsound mind.¹²

4.124 The uncodified law did not recognise the right of a woman to adopt and even in the case of a widow, who adopted as the agent of her late husband, the rules differed and some schools prohibited it altogether.¹³

The fundamental departure that the new Act has made, is in recognising the right of a woman to adopt in her own right and no longer as the agent of her husband (dead or alive).

4.125 While the Act has certainly improved the status of women, we recommend that the right of adoption should be equal for husband and wife, with the consent of the other spouse.¹⁴

4.126 We welcome the step taken by the Government in introducing an uniform and secular law of adoption—The Adoption of Children Bill 1972—which is now before Parliament, since this would benefit the entire community.

4.127 The statement of objects of the Bill reads : "In India there is no general law of adoption though it is permitted by statute among Hindus and by custom amongst a few numerically insignificant categories of persons. In recent years there has been a growing demand for a general law of adoption in India."

4.128 The growing demand was noticed by the Committee during its tours as a large number of women expressed their approval of the right of adoption being extended to all.

4.129 We recommend the early enactment of the Bill as it will extend the right of adoption equally to men and women of all communities, and will be a step towards a uniform secular law.

9. Hindu Adoption and Maintenance Act, 1956.

10. *Amarendra vs. Sanatan Singh* : 60 I.A. 245. "Under the Hindu Law of adoption, as interpreted .. the validity of an adoption depended on the theory of spiritual benefit which was the guiding principle.....".

11. Sec. 7-19 of the Act.

12. Sec. 8 of the Act.

13. The text which led to differences in interpretation was "Nor let a woman give or accept a son, unless with the assent on her lord" (Vasistha). For the various interpretations and where followed, Mulla—*Principles of Hindu Law* p. 625.

14. As provided in Sec. 5 of the Adoption of Children Bill 1972.

4.130 In dealing with the question of guardianship of a minor child, two principles should be kept in view—the interest and protection of the child, and parental right. It was assumed, at one time, that both these principles coincided and there could never be a conflict. For example, the offence of kidnapping is committed when the minor child is taken out “of the keeping of the lawful guardian without his consent.”¹ The motivation of the person who takes the child and whether such an act is in the child’s interest, are factors which do not negative or even mitigate the culpability of the offence. Today, however, there is a shift and the interest of the child is in many cases the paramount consideration that law bears in mind. Therefore, legislation protects a person who reports and often takes to the police a child who is neglected. Such a child can be removed from parental custody and kept where his best interests would be served.²

4.131 In earlier years parental authority was synonymous with paternal authority and “social and legal thought rigidly adhered to the proposition that the father by his natural right is entrusted with the care and control of his children.”³ Contemporary thought reflected in legislation of various countries has shifted to regarding the child’s interest as of prime consideration and parental rights as being subordinate to it. But unfortunately our law does not clearly reflect this trend. In this branch of law, perhaps more than anywhere else, the judiciary has to set the pace in changing our prevailing norms.

4.132 A guardian may be natural, testamentary or appointed by court. In deciding the question of guardianship two distinct things have to be taken into account the person of the minor and his property. Often the same person is not entrusted with both. As in other spheres of family law there is no uniform law. Three distinct legal systems are prevalent, Hindu Law, Muslim Law and the Guardians and Wards Act, 1890.

Hindu Law :

4.133 The Hindu Minority and Guardianship Act, 1956 has codified the law but as in the uncodified law it has upheld the superior right of the father. It lays down that a child is a minor till the age of 18. The natural guardian for both boys and unmarried girls is first the father and after him the mother.⁴ The prior right of the mother is recognised only to custody in the case of children below five but even this right is qualified by the word ‘ordinarily’. It has, however, taken away the right of the father, which he enjoyed before, of appointing a testamentary guardian and thereby depriving the mother of the right. Under the present law the father cannot resort to this device. In the case of illegitimate children, the mother has a better claim than the father.

Hindu law, however, makes no distinction between the ‘person’ of the minor and his property and therefore guardianship implies control over both.

4.134 The Act, however, directs that in deciding this question, courts must take the ‘welfare of the child’, as of ‘paramount consideration’. It is under this principle that the judiciary has an important role to play, when there is a conflict between the paternal right and the welfare of the child. Recently, the Supreme Court held that in special circumstances the mother could be held to be the natural guardian even when the father was alive. Though the Supreme Court⁵ has used words like ‘may be considered’ and ‘special circumstances’, we hope that this judgement of the highest court will guide the lower courts, and prevent them from invariably upholding the father’s right, even when it is against the interest of the child.

Muslim Law :

4.135 Under Muslim Law the father’s dominant position is recognised and his rights are very wide, but there is a distinction between guardianship and custody. The term guardianship is usually used with reference to the guardianship of property. This belongs preferentially to the father, in his absence, to his executor. If the father had not appointed any

1. Sec. 361 Indian Penal Code.

2. Children’s Act, 1960—Sec.

3. *Diwan Paras, Law of Parental Control, Guardianship and Custody of Minor Children* (1973) preface pt. VIII.

4. Sec. 6.

5. Sec. 13.

6. *Jija Bai vs. Pathan Khan* 1971 S.C. p. 315. The judgement has been referred to as “a welcome one which accords well with our social circumstances” *Dewan P op. cit.* p. 94.

executor, the guardianship passes to the paternal grandfather. Among the Shias the difference is that the father is regarded as the sole guardian but after his death it is the right of the grandfather to take over the responsibility and not that of the executor. Both the schools however agree that the father while alive is the sole guardian. The mother is not recognised as a natural guardian even after the death of the father.

4.136 There is some difference of opinion as to whether the right of the natural guardian extends only over the property rights of the minor or also over his person. In the case of the father, there is no doubt that his right extends to both property and person. Even when the mother has custody of the minor child, the father's general right of supervision and control remains. The father, if he so desires, may appoint the mother as a testamentary guardian. Therefore, though the mother may not be recognised as a natural guardian, there is no objection to her being one under the father's will. When she is a testamentary guardian, she will have the right to control both the person and the property of a minor. The Shias however do not recognise the right of mother to be a testamentary guardian if she is a non-Muslim. Under both the schools, a mother has no right to appoint a testamentary guardian, except when she herself has been appointed as a general executrix under her husband's will.

4.137 Though a mother cannot be a maternal guardian, Muslim Law recognises that she has the prime right to custody of minor children (*hizanat*). This right is recognised by all authorities under Muslim Law. "The mother is of all persons best entitled to the custody of her infant children..." (Fatwai Alamgiri).

4.138 In the case of a woman custodian the following qualifications are required :—

- (a) of sound mind
- (b) of good moral conduct
- (c) living in such a place where there is no risk, morally or physically to the child
- (d) of such an age which would qualify her to bestow on the child the care it may need.

The last does not apply when the custodian is the mother. There is no general agreement however, about the qualifications necessary, if any, when the custodian is a man.

4.139 The mother's right of custody or *hizanat* appears to be an absolute right and even the father cannot deprive her of it. Misconduct is the only condition which can deprive the mother of this right. There is however no unanimity about whether this is a maternal right or a right in the interest of the child. The distinction though subtle, is relevant because if it is a maternal right then only her positive misconduct can lead to her deprivation of the custody; if it is a right in the interest of the child, then even when there is no misconduct on her part she may be deprived on the ground that some other person is more suitable as a custodian. This question still remains an open one. There has been no clear cut judicial pronouncement on this matter in India. In Pakistan it has been decided that '*hizanat*' is based on the presumption of welfare of the minor and therefore could be rebutted.⁷

4.140 There is a difference between the Shia and Hanafi school about the age at which the right of the mother to custody terminates. In the case of a minor son, the Shia school holds that the mother's right to *hizanat* is only during the period of weaning which is over when the child has completed the age of two. The Hanafi school, on the other hand, extends the period till the minor son has reached the age of seven. Both schools agree that the same age cannot be applied when the minor is a girl. The Shia Law upholds the mother's right till the girl reaches⁷ and the Hanafi school till she attains puberty. Both schools agree that only the mother has the right to the custody of a minor married girl till she attains the age of puberty.⁸

4.141 The Muslim concept of *hizanat* is definitely an advance on the other legal systems, because it recognises that for a minor child the mother's care and control is more desirable. The father, therefore, is required to pay maintenance to the mother for the child for this period.

7. Cited in Ashraf Kazi Muhammad, *Family laws in Pakistan* p. 108

8. Dewan P op. cit, pp 135-137.

4.142 The supremacy of paternal right is the keynote of the Guardians and Wards Act which governs all communities other than Hindus and Muslims. It clearly lays down that the father's right is primary and no other person can be appointed unless the father is found unfit. However, as in the Hindu Law, the Act provides that the court must bear in mind the welfare of the child, though this is not mentioned as being of paramount consideration. In recent years, however, some of the decisions have broken away from the past attitude, looking upon the father not only as a natural guardian but as having "an inalienable right over his child"⁹, and now hold that "the welfare of the minor is the prime consideration and even the paramount right of the father should be subordinated"¹⁰

4.143 We recommend :

1. that the control over the person and property of a minor cannot be separated and should vest in the same person;
2. the question of guardianship should be determined entirely from the point of view of the child's interest and not the prior right of either parent;
3. the parent who does not have guardianship should have access to the child;
4. whatever the decision taken earlier the child's choice of guardians should be obtained when the child reaches the age of 12.

4.144 We support the recommendations of the U.N. Commission on the Status of Women which¹¹ are as follows :—

- (a) "Women shall have equal rights and duties with men in respect to guardianship of their minor children and the exercise of parental authority over them, including care, custody, education and maintenance;"
- (b) "Both spouses shall have equal rights and duties with regard to the administration of the property of their minor children, with the legal limitations necessary to ensure as far as possible that it is administered in the interest of the children;"
- (c) "The interest of the children shall be paramount consideration in proceedings regarding custody of children in the event of divorce, annulment of marriages or judicial separation."
- (d) "No discrimination shall be made between men and women with regard to decisions regarding custody of children and guardianship or other parental rights in the event of divorce, annulment of marriage or judicial separation."

VII—Maintenance

4.145 The obligation of the husband to maintain his wife arises not out of any contract, express or implied, but out of the status of the marriage. As in other branches of law, the right to maintenance forms a part of the personal law and therefore is not uniform.

4.146 Apart from the right given in the personal laws the Criminal Procedure Code, enacted in 1898, provided for right of maintenance. The right of the wife and dependent children to move the court for relief against the husband or the father who neglects or refuses to maintain his dependent family members is thus not confined to any particular religion but is given to all wives and children irrespective of their personal laws. To this extent uniformity had been achieved in at least one aspect of family law. Considering the date of this law, the obligation was, understandably, confined to only the husband or the father, with no corresponding obligation being placed on the wife or the mother.¹

4.147 This Code has, however, been repealed recently and we are today governed by the New Criminal Procedure Code of 1974. In spite of the passage of 76 years, however, the new Code continues to reflect the old attitude to women. With some modifications like extending the right to demand maintenance to indigent parents and to divorced wives, the

9. Abdul Aziz Khan vs. Nanhe Khan 1927 All p. 458

10. Baddi Reddi Bulliraju v.s. Kadam Surya Rao, 1959 Ap p. 678

11. 20th Session, 13th February to 6th March, 1967.

1. Order for maintenance of wives & children—Sec. 488 Criminal Procedure Code.

obligation to maintain continues to be that of the man.² In the changed social context and particularly in view of our avowed declaration of equality, it is irrational to place the obligation only on the man. However, small the number may be, there are today women economically independent who can not only look after themselves but also their husbands and children. Similarly the duty to look after indigent parents cannot be restricted only to sons. As a matter of fact the exclusion of daughters from the obligation may be used as an argument to deprive them of their share in the father's property.

4.148 As we believe in equal status of husband and wife and of son and daughter, we recommend amendment of the law to provide for obligation of the economically independent woman:

- (a) to maintain her dependent husband;
- (b) to share with him the duty to maintain their children;
- (c) to share with her brothers the duty to maintain their indigent parents.

The inclusion of the right of maintenance in the Criminal Procedure Code has the great advantage of making the remedy both speedy and cheap. The underlying principle of this is to prevent starvation and vagrancy, which usually leads to the commission of crimes.³ From this point of view, it seems unjustified to limit the total amount of maintenance for all dependent persons to Rs. 500.⁴

4.149 We welcome the extension of the right to divorced wives as the previous restriction to wives only was an obstacle to a woman wishing to free herself from a marriage which was causing her no happiness or satisfaction. But in extending this right to divorced wives uniformity has been sacrificed and no longer can all women claim to be governed by the same law which they could since 1898. An exception has been introduced,⁵ to deny maintenance to those divorced wives who have received a 'sum of money payable under customary or personal law'. This clearly excludes Muslim women who may have got the dower at the time of the dissolution. There is no scope even for judicial scrutiny to examine whether the amount paid as dower is adequate for maintenance or not. This exclusion of all divorced Muslim women defeats the purpose of the section to provide a speedy remedy to indigent women.

4.150 We, therefore, recommend that the ceiling placed on the maximum amount payable as maintenance should be removed and the term 'wife' to include divorced wife be made applicable to all women without any exception.

Hindu Law

4.151 Unlike the right given under criminal law, where the claim of the wife depends on the husband having 'sufficient means', under Hindu Law her right is absolute and the husband cannot claim inadequate means to deny maintaining her.⁶ Even a previous order of the criminal court will not bar her right to seek further relief in a civil court. But she loses her right if she deviates from the path of chastity. Even a single lapse from chastity may affect her right detrimentally.⁷ Under criminal law, however, the right will be affected only if the wife is living in adultery at the time of her claim. Her past adultery will not affect her right but may be a factor in fixing the amount of maintenance.

4.152 The exacting standards are perhaps explained by the fact that both under the uncodified Hindu Law as well as under the present law, the Hindu Adoption and Maintenance Act 1956, she gets a real maintenance. According to judicial opinion "just an adequate fare with nothing for clothing, residence as also for medical attendance and treatment falls short of maintenance" and these are "minimal in a civilised society."⁸ In assessing the amount of maintenance, the court takes into account various factors like the position and status of the parties, the reasonable wants of the claimant and the obligations and liabilities of the husband. It also judges whether the wife is justified in living apart from the husband. The justifiable reasons are spelt out in the Act.⁹

2. Order for maintenance of wives, children & parents—Sec. 125 Criminal Procedure Code 1974.

3. Law Commission of India—41st Report p. 303

4. Magistrate..... order... a monthly allowance.....not exceeding five hundred rupees in the whole"
Sec. 125 (New Code).

5. Sec. 127 (3) (b) Criminal Procedure Code 1974

6. Mulla Hindu Law (1960) p. 697

7. "A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste." The Hindu Adoption and Maintenance Act 1956, Sec. 18 (3).

8. Kiranbala Saha vs. Bankim Chandra Saha 1967 Cal. 603

9. (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

remedied by the codified Hindu Law. Maintenance pendente lite (pending the suit) and even the expenses of a matrimonial suit will be borne by either husband or the wife if the other spouse has no independent income for his/or her support. The same principle will also govern the payment of permanent maintenance¹⁰ and the court will fix the amount taking the needs of the applicant into account. If necessary the Court may secure the payment of this amount to the party concerned, by securing a charge on the immovable property of the respondent. Such a right will continue as long as the applicant for maintenance remains unmarried.

4.154 It is strange that while the question of maintenance as a real need and responsibility of either spouse was recognised by the Hindu Marriage Act as early as 1955, the Criminal Procedure Code passed in 1974 should have reverted again to the 19th century concept which regards woman as only a dependent.

Muslim Law

4.155 Maintenance of the wife is a precept in the Quran and the highest obligation of the husband. Maintenance (nafaqa) includes food, clothing and lodging and is in no way dependent on the husband's means or on the wife's lack of possession of an independent income.¹¹ She has, however, to be accessible to the husband and obey his reasonable commands. The Muslim wife also has the right to sue her husband under the Criminal Procedure Code, but under that law the sum ordered can never exceed Rs. 500. Under the personal law, the court while fixing the amount, considers the rank and the circumstances of both the spouses. As already discussed, failure of the husband to maintain his wife for two years entitles her to get a divorce.¹² Her right to maintenance lasts only as long as she remains a wife. If she is divorced she loses her right of maintenance and is only entitled to it for three months (the period of iddat). After this period she has no further claim and it is this which has created a discrimination between the Muslims and other Indian women. *We recommend the removal of this discrimination and extension of right of maintenance to divorced wives.*

Parsee Law

4.156 The Parsee Marriage and Divorce Act 1936, being a pre-independence legislation recognises only the right of the wife to maintenance—both alimony pendente lite as well as permanent alimony. The maximum amount that can be decreed by the court as alimony during the time a matrimonial suit is pending in court is 1/5th the husband's net income. In fixing the quantum as permanent maintenance, the court will determine what is just bearing in mind the ability of the husband to pay, the wife's own assets and the conduct of the parties. The order will remain in force as long as the wife remains chaste and unmarried.¹³ The right of the wife to be maintained by the husband has been regarded as being an inherent right. Therefore any contract by her giving up future rights of alimony has been regarded as contrary to public policy.¹⁴

Christian Law

4.157 The maintenance rights of a Christian wife are governed by the Indian Divorce Act, 1869. The provisions are the same as those under the Parsee Law, and the same considerations are applied in granting maintenance both alimony pendente lite as well as permanent maintenance. Apart from similar provisions in the Parsee Act, there are two sections in the Indian Divorce Act which reinforce the guilt theory on which the Act is based but which indirectly affect maintenance rights. One provides that if a divorce or judicial separation

- (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
- (c) if he is suffering from a virulent form of leprosy;
- (d) if he has any other wife living
- (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
- (f) if he has ceased to be a Hindu by conversion to another religion;
- (g) if there is any other cause justifying her living separately.

10. Hindu Marriage Act. Sec. 24 and Sec. 25.

11. Verma B.R.—Muslim Marriage and Dissolution (1971) p. 93

12. Vide Section IV of this Chapter

13. Secs. 39 & 40 (i) of the Act.

14. Hirabai Bharucha vs. Pirojshah Bharucha, AIR 1954, Bombay 537.

is obtained by the husband on the ground of the wife's adultery and the court finds that the wife is entitled to some property, it may in its discretion order that the whole or part of the property should be settled for the benefit of the husband or the children. The other provides that where the court has decreed damages to the husband against the adulteror of the wife, the court may in fixing damages make an order that the whole or part of the amount recovered should be settled for the benefit of the children, or used as a provision for the maintenance of the wife.¹⁵

Other Suggested Amendments

4.158 While the right of maintenance is recognised in all the different personal laws, the common problem faced by most women, even amongst the very few who know of their rights, is the expense and delay in first getting an order from court. Often a counter claim is made by the husband for restitution of conjugal rights in order to defeat or at least delay her right. Even when the order for maintenance is made, the husband very often fails to pay after a few months and this entails the wife's going again and again to court and undergoing tremendous delay and expense. The arrears of maintenance is treated as a debt and recovery of it is by the ordinary procedure laid down for all other debts. This is very often expensive and time consuming.

4.159 *In order to minimise the hardship caused by nonpayment of maintenance, and to ensure certainty of payment, we recommend that all maintenance orders should be deducted at the source by the employer (as done in the case of income-tax). Where it is not possible to deduct at the source, as in the case of a business man or a self-employed person, the arrears of maintenance should be recovered as 'arrear of land revenue or by distress'.¹⁶*

4.160 As this procedure has been adopted in the recovery of income tax, extension of it in the field for recovery of a maintenance order should not pose any undue difficulty. *An additional mode of execution of the maintenance decree may be to adopt the same procedure as is done in the case of fines under the Criminal Procedure.¹⁷* This has the advantage of making the recovery both cheap and speedy.

4.161 The ultimate and the best solution however, lies in leaving a specialised court like the Family Court to deal with the entire question of maintenance. Apart from matters like the income of the respective spouses or the degree of financial dependence, a Family Court would be able to approach the question taking an overall view. The matters for consideration would be : (a) the husband's obligation to his divorced wife, as well as obligations incurred by him by a subsequent marriage; and (b) the divorcee's degree of dependence on the maintenance order and her efforts to become financially independent. A continuing process of assessment is necessary and only a specialised court (which will be free of the tremendous pressure of work and time an ordinary civil court has today) can exercise this vigilance.

VIII--Inheritance

Christian Law

4.162 As far back as 1925 the existence of a large number of statutes dealing with succession led the government to pass the Indian Succession Act. The object of the Act was to consolidate the large number of laws which were in existence and not to unify them.¹ The laws governing succession of Muslims and Hindus were excluded from the purview of this Act.² In the process of consolidating, two clear schemes were adopted—one dealing with the succession rights of persons like Indian Christians, Jews and those married under the Special Marriage Act (1955) and one for succession rights of Parsis.

4.163 In the first scheme, (persons who were not Parsis), when an intestate died leaving a widow and a lineal descendant, she would be entitled to a fixed share of one third of the property, and the children irrespective of their sex would share equally. This law was amended with the object of improving the rights of the widow and it was provided that

15. Sec. 39 of the Act.

16. Kagzi, M.C.J. *Elements of Income Tax Law* p. 107 'Distress' has been explained as "an unusual and summary process (where) the movable property of the defaulter can be seized" *ibid* p. 108

17. Sec. 421

1. Statement of Objects & Reasons as given by the Statute Law Revision Committee.

2. As well as of Buddhists, Sikhs, and Jains. Indian Succession Act. Sec. 29

where the net value of the estate exceeded rupees five thousand, she was entitled to a charge for a sum of rupees five thousand (with interest at four per cent till payment) and in the residue she was entitled to her intestate share. The section applied only in cases where the deceased had died intestate in respect of all the properties.

4.164 But inexplicably even this limited benefit has been denied to the following categories of persons :

- (1) Indian Christians;
- (2) Any child or grandchild of any male person who is or was at the time an Indian Christian; or
- (3) Any Hindu, Buddhist, or Jain, succession to whose property is governed by the Indian Succession Act.⁴

Since this provision seeks to give better rights to a widow without lineal descendants, the denial of the benefit to the above mentioned groups can not be justified on the grounds of policy.

4.165 But the Act confers no restriction on the power of a person to will away his property. Therefore the protection enjoyed by a Muslim widow to a share of the estate⁵ and by the Hindu widow to being maintained⁶, is denied to other widows under this law. There is, therefore, a need to incorporate some restrictions, on testation similar to that prevailing under Muslim Law⁷ to prevent a widow from being left completely destitute.

Christians in Kerala :

4.166 To add to the diversity of laws, the Travancore High Court held that the Indian Succession Act did not apply to the Christians of the State. The result of the decision was that Christians in Kerala and those outside are governed by different laws. The decision also continues the multiplicity of laws which govern Christians even within the State. The Travancore Christian Succession Act⁸ governs the succession rights of Christians in Travancore but the Act is not applicable to those following the "Marumakkavazhi System"⁹ of inheritance. To add to this certain sections of the Act are not applicable to certain classes of the Roman Catholic Christians of the Latin Rite¹⁰ and to Protestant Christians living in the five taluks mentioned therein¹¹ among whom male and female heirs of the intestate share equally. The Cochin Christian Succession Act,¹² generally governs the Succession to the properties of Christians in the former territory of the Cochin State. The Cochin Act exempts members belonging to the European, Anglo-Indian and Parangi communities, and the Tamil Christians of the Chittur Taluk who follow the Hindu Law.¹³

4.167 A characteristic feature of the Travancore and Cochin Christian Succession legislations is that they are based on the former notions of the Hindu Law of Inheritance which discriminated against women. Therefore a widow or mother inheriting immovable property takes only a life-interest terminable on death or remarriage.¹⁴ A daughter's right is limited to "Streedhanam". Even in cases where she is entitled to succeed she takes a much lesser share.

3. Sec. 33 (a)

4. Ibid

5. Infra

6. A Hindu widow who has been disinherited is entitled to maintenance from persons taking the estate of her husband.

7. Kurian Augusty vs. Devassy Aley—AIR 1957 T.C.1.

8. The Travancore Christian Succession Act 1092 (.....), 1916 hereinafter referred to as the Act or the Travancore Act.

9. Ibid. Sec. 3

10. Abdurahiman vs. Augustinju AIR, C.T. 176 : The seven hundred community of Latin Catholics did not follow the custom of giving equal share. Varghese, *Inheritance of Latin Catholic Females*, 1965 L.L.T. (J) 89

11. Karunagappally, Quilon, Chirayinkil, Trivandrum and Neyyattinkara Taluks.

12. The Cochin Christian Succession Act, 1097 (M.E.)—1921 A.D. Hereinafter referred to as the Cochin Act.

13. This was confirmed by the Supreme Court as recently as 1969 "The Vanniya Tamil Christians of Chittur Taluk are governed by the Mitakshara School of Hindu Law in regard to inheritance and succession". *Anthonyswamy vs. Chinnaswamy*. (1969) S.C.C. p. 18

14. It lays down : "Over any immovable property the widow or mother becomes entitled to under Sections 16, 17 and 22 she will have only a life-interest terminable at death or re-marriage". The Travancore Christian Succession Act, 1016, Sec. 24.

4.168 Widow :—Under the Travancore Act if the intestate has died leaving a widow and lineal descendants the widow is entitled to a share equal to that of a son. If on the other hand, the intestate dies leaving a widow and daughters (or the descendants of a daughter) her share will be equal to that of a daughter. The nature of her interest (i.e. life interest) is the same when she takes the property in the absence of any lineal descendants. The widow's share is half when the intestate dies without leaving any lineal descendant but has left behind his father or mother.¹⁵

4.169 According to the Cochin Act when there is a son or the lineal descendants of a son, the share of a widow is equal to two-thirds that of a son. If the intestate has left no son or the lineal descendant of a son, she is entitled to a share equal to that of a daughter.¹⁶

4.170 Daughter :—Even though she is mentioned as an heir along with a son in Group I of section 25 of the Travancore Christian Succession Act, a daughter is entitled to "Streedhanam"¹⁷ only. The Streedhanam of a daughter, for the purpose of the Act, is fixed at one-fourth the value of the share of a son or Rs. 5,000/—whichever is less.¹⁸

4.171 The Cochin Act provides that where an intestate has left sons and daughters, each daughter shall take one-third share of a son.¹⁹ But like the Travancore Act an important limitation in regard to a daughter's share is laid down in Section 20. This in effect makes the right of a daughter to receive streedhanam²¹ only. But the Cochin Act does not specify a limit on the amount of Streedhanam. Both legislations, however, provide that streedhanam which has not been paid, but promised by the intestate, will be a charge on his estate.

4.172 It is, therefore, apparent that the rights of inheritance of Christian women under the Travancore and Cochin Acts are meagre. Even these rights may be defeated as the testator has the absolute power of willing away his entire property.

4.173 *We recommend that immediate legislative measures be taken to bring Christian women of Kerala under the Indian Succession Act as a first step to unify the law and as suggested above restrictive power be placed on the unfettered right of a person to will away his entire property.*

Goa & Pondicherry:

4.174 The Christians of Goa were governed by the Portuguese Civil Code and continue to be so even today. The result is not only an addition to the multiplicity of laws but the prevalence of a legal system which is totally different from the ones prevailing in the rest of the country.

4.175 While the Portuguese Civil Code makes no differentiation on the basis of sex, it relegates the widow to a very low position. The order of the legal heirs of a person are first sons and daughters who get the property in equal shares. Failing them the parents inherit, followed by the brother and his descendants. The widow will inherit only if there is no heir in the above classes. But the widow will become the owner of "the agricultural commodities and fruits, called or pending, meant and necessary for the consumption of the conjugal couple". She will however lose even this right if she is divorced or separated from her husband.²²

15. Secs 16 and 17 read with Sec. 24

16. The Cochin Christian Succession Act, 1097, Sec. 11 and 12

17. Section 5 of the Travancore Christian Succession Act defines Streedhanam thus: "Streedhanam means and includes any money or ornaments, or in lieu of money or ornaments, any property movable or immovable, given or promised to be given to a female or, on her behalf, to her husband or his parent or both of them, by any one who claims under such father or mother, in satisfaction of her claim against the estate of the father or mother". As to the position Streedhanam in the context of the Dowry Prohibition Act, 1961 see, Mathew, *Dowry Prohibition Act and the Payment of Streedhanam*, 1962 K.L.T. (J) *Mootheden Dowry Prohibition Act and the payment of Streedhanam*, 1962 K.L.T. (J) 29; Derrett, *Streedhanam and Dowry Prohibition Act*, 1962 K.L.T. (J) 43.

18. The Travancore Christian Succession Act, 1092 Sec. 20.

19. The Cochin Christian Succession Act, 1092 Sec. 20 (b).

20. The Cochin Christian Succession Act, 1097 Sec. 22. It lays down: "Notwithstanding anything in the foregoing provisions of this Act, when a Streedhanam has been given or contracted to be given by the father, mother, paternal grandfather or the paternal grandmother neither the said woman nor any lineal descendant of hers as such, shall be entitled to a distributive share in the property of any of them dying intestate if (1) a brother of the said woman being the lineal descendant of the intestate or (2) the lineal descendants of such a brother survive the intestate.

21. The Cochin Christian Succession Act, 1092 sec. 3 which defines Streedhanam thus: "Strehdhanam means any property given to a woman, or in trust for her husband, his parent or guardian, in connection with her marriage, and in fulfilment of a term of the marriage treaty in that behalf"

22. Portuguese Civil Code Sec. 1969

control is known as legitim and usually consists of half the property.²³ But even this legitim can be denied to an heir under certain conditions e.g. if a child lodges a complaint against his parents for an offence which is not against his person or against his spouse.²⁴

4.177 But even a disinherited heir is entitled to maintenance.²⁵ The recognition of equal rights for sons and daughters is undoubtedly to be welcomed but to relegate the widow to the fourth position and leave her with only the fruits and agricultural commodities needs to be remedied immediately.

4.178 The legal system for Christians prevailing in Pondicherry is extremely anomalous. During the French rule both Hindus and Indian Christians were governed by the Hindu Law. After Pondicherry became a part of India, the Hindu Succession Act was extended to the State but as that Act only applies to certain categories of persons who come under the term 'Hindu', the Indian Christians in Pondicherry can no longer be governed by it. The Indian Succession Act has not been extended to the State, so the Christians there continue to be governed by the precodified Hindu Law, which relegates a woman to an inferior position and does not even regard her as being full owner even in the few cases where she can inherit property. The resultant position is anachronistic and should be remedied immediately.²⁶ (*We recommend extension of the Indian Succession Act to Goa and Pondicherry*).

Parsee Intestate Succession

4.179 A feature of the rules governing the Parsi intestates is, that like the Hindu law and unlike the Muslim law, there are separate rules for the devolution of the property of male and female Parsi intestates. The rules relating to the intestate succession of males have the characteristic of Muslim law, namely, the share of a male heir is double that of a female heir of the same degree. For example, if a male Parsi dies leaving a widow and children, the property will be divided so that the share of each son and widow will be double the share of each daughter. Further, if a male Parsi dies leaving one or both parents, in addition to a widow and children, the property will be divided so that the father shall receive a share equal to half the share of a son and the mother will receive a share equal to half the share of a daughter²⁷. The inferior position of a mother in the scheme of succession thus becomes evident and the position is radically different from that which prevails under the Hindu Succession Act, 1956²⁸.

4.180 The above position may be contrasted with the rules applicable to the succession of a female Parsi intestate. If she dies leaving a widower and children, the property will be divided equally among them and if she dies leaving children only, among the children equally. Thus, while a son is entitled to an equal share in the mother's property along with the daughter, the daughter is not entitled to the same right when she inherits the property of the father along with the son.

4.181 It should be pointed out that the above provisions were enacted in 1939²⁹. At the time these rules conferred better rights on women than the then existing Hindu and Muslim laws. But with the passage of time, these rules have become out of step with the progressive trends in the society. The Parsi daughter's share remains half of that of a son as in Muslim law, but she is denied protection against disinheritance which is the beneficial feature of Muslim law.

23. Article 1784.

24. In the case of a child he can be disinherited in the following cases.

- (i) if he commits against their person any offence punishable with term of imprisonment over six months;
- (ii) if he judicially charges or lodges a complaint against his parents for offence which is not against the child's person or against his consort, ascendants, descendants or brethren;
- (iii) if the child, without just cause, denies to his parents due maintenance. Art. 1876. The other grounds which the remaining classes of heirs can be disinherited are given in the following articles—1877 to 1899.

25. The person who gets the property in place of the disinherited heir has to maintain him but only to the extent of the property he has inherited Article 1883.

26. Note of A.P. Jegaraj to the Committee on the Status of Women.

27. The Indian Succession Act, 1925, Sec. 51 (I) & Sec. 52 (2).

28. A mother inherits equally with the widow, sons, daughters as a Class I heir.

29. Act XVII of 1939. The amending Act of 1939 was repealed in 1942 (Act XXV of 1942) and the provisions were incorporated in the Indian Succession Act of 1925.

4.182 Further, it is extremely doubtful whether sections 5 to 56 of the Indian Succession Act govern the devolution of agricultural properties, as the Central Legislature was not competent to enact legislation relating to agricultural lands, in 1939³⁰. Therefore, it would seem that agricultural lands will devolve according to the rules in force prior to the amendment, according to which the son's share will be four times that of a daughter, the widow's share will be double that of a daughter; and father and mother are not entitled to any share.

Hindu Law

4.183 The problem of succession cannot be understood without reference to the law of joint family. Under the Mitakshara law, the law of succession is intimately connected with the special incidence of coparcenary properties. In coparcenary properties a son, son's son and a son's grandson acquire a right by birth. Thus only males can be coparceners.

4.184 The salient feature of a Mitakshara coparcenary is the existence of community of interest, unity of possession and the right of survivorship among the coparceners. So long as the family is undivided, no individual coparcener can claim that he is entitled to a specific share of the joint estate. His share is liable for increase by deaths and decrease by births. The properties are managed by the Karta who is usually the eldest among the coparceners. The share of a coparcener is ascertained only by partition.

4.185 Though the institution of joint family was common in most parts of India, there were two major systems prevailing in the country—Mitakshara and Dayabhaga—which dealt differently with the property rights. Added to these two systems was the matriarchal system which prevailed in some southern states. Pre-independence India, therefore, had a number of different systems of succession among Hindus and in most of them, the position of the woman was one of dependence with barely any proprietary rights. Even where they enjoyed some rights they had only a life interest and did not enjoy full ownership. While earlier this may have been socially acceptable, with socio-economic changes brought about in the 20th century this inferior position was no longer tenable. As discussed earlier, the rigidity that had crept into the law because of the British policy of non-intervention had made it impossible to adopt the legal systems to changes. The position, therefore, could only be remedied by legislation which would reflect the socio-economic changes since our independence and at the same time fulfil the promise of non-discrimination guaranteed in the Constitution.

4.186 With the object of bringing in uniformity and in conformity with the norms of the post Constitution period, the Hindu Succession Act was passed in 1956 though after stiff resistance from the traditionalists.

4.187 The Act brought in some radical and fundamental changes, the most important of which was to introduce equal rights of succession between male and female heirs, in the same category, like brother and sister, son and daughter. It also simplified the law by abolishing the different systems prevailing under the Mitakshara and Dayabhaga Schools. The Act also extended to persons in south India previously governed by the Marumakkattayam law also. It recognised, however, that there had to be some differences in a system which was found in matriarchy. The hold of tradition, however, was so strong that even while introducing sweeping changes, the legislators compromised and retained in some respects the inferior position of the women. By yielding to pressure, it sacrificed the uniformity which had been one of the major aims in introducing this law. A close study of the Act discloses that there are still a number of different systems governing succession.

4.188 The most remarkable features of the Act, however, are the recognition of the right of women to inherit equally with men and the abolition of the life estate of female heirs. The Class I heirs of a man today are widow, mother, son, daughter, widow of a predeceased son, and sons and daughters of predeceased sons or daughters. These heirs take the property in equal shares and as absolute owners.

4.189 The one major factor which has contributed to continuing the inequality between sons and daughters is the retention of the Mitakshara coparcenary. As mentioned membership of it is confined only to male members. No stranger can be introduced even by agreement of all the members and no female can be a member of a coparcenary. There are no succession rights in a coparcenary but the interest of a coparcener on his death goes to

30. See PARUCK, *THE INDIAN SUCCESSION ACT* 61 (5th ed. Joshi 1966); Irani, *The Personal Law of Parsis of India* in *FAMILY LAW IN ASIA AND AFRICA* 297 (J.N.D. Anderson ex. 1968).

like the Hindu Women's Right to Property Act, have made inroads in the concept of the coparcenary and in some ways it had really lost some of its important features. It would therefore have been quite feasible at the time of the 1956 Act to abolish it altogether. One point of view is that the "best solution would have been abolish the ancient legal formula of acquisition of rights by birth and devolution by survivorship. Since the logical way was to assimilate the Mitakshara to the Dayabhaga, this could also have had the merit of equitable treatment of the nearest female heirs of a coparcener and of bringing about uniformity in the law in all parts of India.³¹" But there was strong opposition to this point of view and the institution was retained but an effort was made to make some provision for the nearest women members of a person i.e. Class I heirs.

4.190 The compromise arrived at was that if a male member of a coparcenary dies then for the purpose of ensuring that his heirs get a share of the property, his share of the coparcenary will be demarcated, as if there had been a partition and that share will be divided among his heirs. It means that, if there is a coparcenary of a father and two sons, the share a father would have got on partition would be one-third. This will be divided among his Class I heirs. The consequence of this is that the two sons in addition to their original interest as coparceners, will get equal shares of the father's property with the mother, grandmother and sister etc. This naturally result in an unequal treatment between brother and sister. In a similar situation under the Dayabhaga system, the daughter will get an equal share with the brothers as there is no right by birth for sons. The retention of the Mitakshara coparcenary, therefore, not only brings about inequality between the same class of heirs but also continues two different systems of inheritance.

4.191 The retention of coparcenary has also meant the continuation of two rights both of which affect the rights of female heirs detrimentally. The first is the right of a coparcener to renounce his right in the coparcenary. In order to do this, no specific formality is required beyond the expression of a clear intention. On such renunciation, the release is deemed to have separated him from the joint family though this will in no way affect the joint status of other members of the coparcenary. The result of this is that on his death he will have no interest in the joint family which could be distributed among the Class I heirs. This deprives the female heirs of any share. A similar result can be achieved by a father who partitions joint family property during his lifetime without reserving any share for himself.

4.192 The second of such characteristics is the right to convert self acquired property to coparcenary property. The transformation of self acquisition into joint family property is frequently resorted to reduce the burden of income tax.³² But the effect of this is that the share of a female heir is reduced because in the self acquired property she would have had the right to inherit equally with the male members as Class I heirs.

4.193 Mitakshara coparcenary with its basic principle of right by birth of a male coparcener is the cause of unequal rights between the male and female heirs, though the Act accepted in principle the equality of the sexes. It should be noted that the Hindu Code Bill 1948 as amended by the Select Committee, had, in fact, suggested abolition of the right by birth.³³

4.194 *We recommend the abolition of the right by birth and the conversion of a Mitakshara coparcenary into a Dayabhaga one.*

4.195 Another provision in the Act which contributes both to lack of uniformity as well as continuation of discriminatory treatment of female heirs is the provision excluding the devolution of tenancy rights under the legislation of the States, from the scope of the Act.³⁴

31. Mulla—*Principles of Hindu Law* (1960) p. 916—During the debate in the Lok Sabha Mitakshara coparcenary was described as a 'tottering' structure on account of the 'shattering' blows delivered to it by enactments from time to time and no useful purpose will be served by retaining it. The opposition argued that though 'battered and bruised' it could still play a useful role.

32. *Income Tax Commissioner vs. Keshavlal* AIR 1965 S.C. 860.

33. No right by birth shall be recognised by any court". An amendment proposed by the Government spelt out the details more clearly as it suggested.

"No Hindu shall have any right to, or interest in-

(a) any property of an ancestor during his lifetime merely by reason of the fact that he is born in the family of the ancestor, or

(b) any joint family property which is founded on the rule of survivorship."

34. "For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the Provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings." Sec 4 (2).

The apparent object is to protect the rules in State Legislations from the over-riding effect of the Hindu Succession Act, which otherwise would have governed the succession to tenurial interests. The reasons behind this exemption, as they appear from the legislative debates are two-fold.³⁵ First, that tenancy laws being property laws, apply to all whether a Hindu or non-Hindu. As the Hindu Succession Act is a personal law, it should not override the provisions of property law enacted in the interests of the agricultural economy. Second, that the States are responsible for agricultural laws and the Central Government is anxious not to encroach on the rights of the State Governments.

4.196 A serious objection is that the beneficial effects of the Hindu Succession Act can be denied by a resort to this provision. The bulk of the property in India is agricultural property and such an exemption detracts from the principle of uniformity. It may also be noted that the Act does not define the word "tenancy rights" nor is it defined in the General Clauses Act, 1897. Thus, on the question as to what constitutes tenancy rights, the last resort must be had to the specific legislation of the State itself, and it is quite conceivable that a state with dominant conservative groups could defeat the purpose of the Act by defining tenancy rights to include all interests arising in or out of agricultural lands.

4.197 No particular economic justification has been made out by the States or States concerned for having separate rules for devolution of tenancies. The fact that many States do not have special provisions for succession to tenurial interests and the fact that the exception protects legislations in some States in the North, gives rise to a suspicion that it was intended as a concession to the conservative elements in these regions. The argument that the Act is a personal law and that it cannot override a property law ignores two aspects: (1) in pith and substance a law providing for devolution of tenancies is a law relating to succession, and (2) the fact that these special laws may contain features which are more discriminatory than the existing Hindu and Muslim laws.

4.198 The legislation in Uttar Pradesh, a State which comprises one-sixth of India's population, furnishes an example of this kind³⁶ :—

When a bhumidar,³⁷ sirdar or asami being a male dies, his interest in his holding shall devolve in accordance with the order of succession given below:

- (a) The male descendant in the male line of descent in equal shares per stirpes.....
- (b) widow and widowed mother and widow of a predeceased male lineal descendant in the male line of descent, who have not remarried.
- (c) father;
- (d) unmarried daughter.

4.199 The above scheme of inheritance shows that in competition with a son the widow of a deceased is not entitled to succeed. The claims of a widow and unmarried and married daughters are preceded not only by the lineal male descendants in the male line of descent, but even by their widows who have not remarried. The exclusion of the widow and the daughters cannot be justified on any principle.

4.200 The seriousness of the problem is emphasised by the fact that the Act is likely to apply to all the agricultural land in course of time, in Uttar Pradesh. The statement of Objects and Reasons of the Uttar Pradesh Zamindari Abolition Act says: "It is expected that the vast majority of cultivators will become bhumidars. The present intermediaries in respect of their *sir*, *khudkasht* and groves will be classed as *bhumidars* persons paying land revenue."

The Jammu & Kashmir Land Revenue Act as well as the Tenancy Act make a distinction between male and female children. Under the Land Revenue Act a female child is not entitled to any share in land and under the Tenancy Act, the female children of occupancy tenants will not inherit any tenancy rights after the occupancy tenant is dead.

Census of India. 1961. Vol. VI. J & K. Part 6. Village Survey
Monographs. Monographs 7 & 8, Pp. 34 & 57.

This discriminatory treatment is also seen in the new laws passed in some of the States—The Madhya Pradesh Ceiling on Agricultural Holding (Amendment) Ordinance 1974 and Karnataka Land Reforms Act 1974. Vide chapter V. para 068.

35. (1956) 4 Lok Sabha Debates, (Cols.) 1970-71.

36. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, sec. 171.

37. Bhumidar:— A landholder or a proprietor.

we recommend the abolition of the exception provided in section 4 (2) of the Hindu Succession Act, relating to devolution of tenancies.

4.202 Suggestions have been made to the Committee that equality of sexes could be achieved under the Hindu Succession Act, if the law was amended to permit women to become members of the coparcenary and pending further legislation to permit them to act as a karta of the joint family. We do not feel that the situation will improve by making this recommendation as the present unequal treatment will continue as far as wives or widows of coparceners are concerned, who not having been born in the family cannot become members of it.

4.203 In all other respects uniformity has been achieved among Hindus as the Class I heirs mentioned are the same for all. Similarly among the heirs of a female owner (with the exception of those who would have been governed by the Marumakkattayam and Aliyasantana law) uniformity as well as equality of sexes have been recognised. Sons and daughters (including the children of any predeceased son or daughter) inherit, equally with the husband.³⁸ A special provision however governs the property of women. In the event of her dying without leaving any children, here property does not automatically go to her husband. If the property in question has come to her from her father or mother it will go to her father's heirs, and if the property has come to her from the husband or her father-in-law it will go to her husband's heirs. For persons who were earlier governed by the Marumakkattayam law, the property goes first to the children and to the mother, and the father and the husband inherit only if there is no heir in this category³⁹.

4.204 Another discriminatory provision in the Act is the one relating to the right of inheritance to a dwelling house. It provides that where a Hindu dies intestate and his property includes a dwelling house wholly occupied by the members of the family, then the female heirs are not entitled to claim partition of it unless the male members choose to divide their shares in the dwelling house. Female heirs are entitled to only the right of residence. Even in this there is a discrimination as this right is restricted to unmarried and widowed daughters or those deserted by or separated from their husbands. A married daughter enjoys no such right⁴⁰.

4.205 Obviously in enacting this provision, the legislature intended to balance the familial with individual interest. The main object of the section is unexceptionable as it asserts the primacy of the rights of the family as against the right of an individual and therefore, the restriction against partition which is against the family interest is justified, and should be retained. But nothing justifies the invidious distinction between married and other daughters. *We recommend the removal of this discrimination so that all daughters enjoy the same right.*

4.206 Like the Indian Succession Act, the Hindu law i. e. both Mitakshara and Dayabhaga place no restriction on the power of testation. During the debates in Lok Sabha on the bill, the fear was voiced that this may lead to the rights of a female heir being defeated. But the Law Minister had brushed aside these fears by saying, "I believe that a normal father will never do any such thing and if at all he has to do it for any reason, he will surely make a provision for his daughter when he is going to deprive her of her share by will⁴¹." But this is an over simplification of the question and as was pointed out during the debate in the Constituent Assembly, "an analysis of the inmates of rescue homes in this country will prove how many of these women are those who have been turned out of the joint family⁴²." The Committee's own experience in many places, but particularly in Banaras, more than proves the point that there are many women who have been reduced to destitution and beggary because their families have deprived them of all support.

4.207 *We recommend that the right of testation should be limited under the Hindu Succession Act, so as not to deprive legal heirs completely.*

Muslim Law

4.208 A vast majority of Muslims in India follow the Hanafi doctrines of Sunni Law and the courts presume that Muslims are governed by the Hanafi Law unless it is established to

38. Sec. 15

39. Sec. 17

40. Sec. 23

41. Law Minister Pataskar (1955) 5 Lok Sabha Debates, Col. 8379.

42. Shrimati Renuka Roy—Constituent Assembly of India Debates (Legislative) 928, dated 25th Feb. 1949

the contrary. Though there are many features in common between the Shiah and the Sunni schools, there are differences in some respects. The Sunni Law regards the Koranic verses on inheritance as an addendum to the pre-Islamic customary law and preserves the superior position of male agnates.

4.209 The heirs related to a deceased person by blood under the Sunni or the Koranic law are divided into three groups: (1) *Zav-il-Furuz* (the sharers or the Koranic heirs); (2) the *Asaba* (agnates or "residuaries") and (3) the *Zav-il-Arham* (uterine relations). The heirs who are neither sharers nor residuaries fall into the third category. The sharers take the estate first; the remaining estate (or the whole of the estate in the absence of heirs of the first kind) is taken by the residuaries. If there are no sharers and residuaries the estate goes to the uterine relations.

4.210 Where there are sons and daughters they inherit as residuaries. Thus if the deceased dies leaving a widow, son and daughter, the widow takes $\frac{1}{8}$ as a sharer, the son takes $\frac{7}{12}$ ($\frac{2}{3}$ of $\frac{7}{8}$) and the daughter $\frac{7}{24}$ ($\frac{1}{3}$ of $\frac{7}{8}$). On the other hand, a daughter in the absence of a son takes the estate as a sharer; half the share if there is only one daughter and $\frac{2}{3}$ if there are two or more daughters. Thus, if the deceased dies leaving father and daughter, the daughter is entitled to half the property as a sharer, the father to one-sixth as a sharer and the remaining one-third as a residuary.

4.211 One primary principle of Muslim law which grossly discriminates against women is that under the law of inheritance, if there are male heirs and female heirs of the same degree like a son and daughter, full brother and a full sister, the share of a female member is half that of the male.

4.212 Under the Hanafi law the widow, though a sharer in every case, is not entitled to take as a residuary. The share of a widow (or widows if there are more than one) is one-eighth. If the deceased dies without leaving a child, the widow's (or widows') share is one-fourth. The wife is not entitled to the *radd* (return).⁴³ The social conditions of the present day necessitate that the measure of protection and security that a wife is entitled to, should be in no way inferior to that of any other member in the family, either during the lifetime of the husband or after his death. Therefore, a widow's position in the law of succession deserves particular attention.

4.213 Under the Shiah law also neither husband nor wife is entitled to the *radd* but if either of them is the sole surviving heir then they inherit the whole property.

4.214 If a Muslim dies leaving a daughter as his only close relative, she will not be allowed to take more than one half of his estate, the other half will go to some distant agnatic relative. Under the Shiah law the daughter would, in a similar situation, take one half as her share and the remaining half under the doctrine of *radd*.

4.215 Unlike Hindu and Christian Law, Muslim Law restricts a person's right of testation. A Muslim can bequeath only $\frac{1}{3}$ of his estate. The question is whether he has the power to correct any hardship that might arise under the law of intestacy by the exercise of his testamentary power (i.e. of one-third of his estate). It is beyond cavil that such hardship arises generally in the case of female heirs. But the Hanafi law appears to be particularly rigid in not permitting any device whereby the inequities of the laws of inheritance may be rectified.

4.216 A bequest to a stranger is valid without the consent of heirs, (if it does not exceed a third of the estate) but a bequest to an heir without the consent of other heirs is invalid. The consent of heirs to a bequest must be secured after the succession has opened, and any consent given to a bequest during the lifetime of the testator can be retracted after his death. As the testamentary power exercised by a deceased in favour of an heir operates at the expense of other heirs, it is not an unnatural attitude to refuse consent to such bequests.

4.217 The Shiah law allows a Muslim the freedom of bequest within the disposable third and recent reforms in Egypt, Sudan and Iraq also permit this. If the rule is relaxed here

43. *Radd* is the portion which remains after the heirs have got their specific shares like $\frac{1}{4}$, $\frac{1}{3}$ etc. The general rule is that the *radd* returns to the Koranic heirs in proportion to their share—Fyzee, *Outlines of Muhammedan Law*, p. 408 and p. 452.

4.218 Muslim law makes no distinction between movable and immovable property and though the right of a female heir like a widow or daughter has always been recognised and they have inherited absolutely (unlike the old Hindu Law), we recommend that legislation be passed to give an equal share to the widow and the daughter along with the son as has been done in Turkey.⁴⁵

4.219 The medley of laws which govern the right of inheritance of not only female heirs of different communities but even of female heirs in the same community require immediate measures. *Broad principles like equal rights of sons and daughters and widows, and a restriction on the power of testation so that dependent members are not left completely destitute are needed immediately.*

4.220 But legislation cannot be an end in itself. Publicity of new legislation and educating women about their rights need to go hand in hand. Otherwise, like many other social legislations, the rights remain only on paper. During its tours the Committee found a large number of women completely ignorant about their rights of inheritance. Even where they know, they have been so conditioned that many of them oppose sisters depriving their brothers of property. Our survey report confirms this finding, as 68.16% expressed their opinion against girls having some share with their brothers in parental property and 57.54% were against girls and boys having equal property rights. But in the absence of social security and inadequate opportunities for employment, a woman without financial security faces destitution in our country. It is true that in a country where a large section of the people are below the poverty line, measures for ownership of property will benefit only a limited section. However, for this section ownership of property will make women independent and they will undoubtedly gain in status. Besides, this will effectively check "the feeling that women are a burden to the family"⁴⁶.

General Recommendations

4.221 *Matrimonial Property*: The various personal laws in our country are uniform in recognising the obligations of a husband to maintain his dependent wife. The right of a wife to a moiety of the husband's property on his death is, however, not an absolute right like maintenance (except in Muslim Law), as the husband under the present system can, if he chooses, deprive his wife completely under his will. Our recommendation regarding restriction of the right of testation, if accepted, will change the moral duty into a legal one. But neither of these two rights recognise the wife's claim to be a part owner of the property acquired and enjoyed jointly by husband and wife during marriage.

4.222 In the socio-economic situation prevailing in our country, the contribution of the wife to the family's economy is not recognised. A large number of them participate in the family's effort to earn a livelihood as unpaid family workers. Even when they do not do so, the economic value of their effort in running the house and assuming all domestic responsibilities, thus freeing the husband for his avocation is not accepted in law, either directly or indirectly. Most married women do not have any independent source of income, many even give up employment after marriage or do not take up a job for many years, in order to be able to devote their full time to family obligations, particularly in bringing up the children. They are, therefore, economically dependent on their husbands. In majority of cases, property, both movable and immovable, acquired during the marriage, is paid for out of the husband's earnings. If a matrimonial home is acquired, it will be registered in the husband's name; if things are bought for the house the legal ownership will vest in the husband, as in economic terms the wife has not contributed anything. The principle of determining ownership on the basis of financial contribution is unjust and works inequitably against women.

4.223 While our personal laws recognise the right of a woman to own and dispose of her personal property without any control from the husband, our survey discloses that only 25.74% have a regular salary and 7.14% occasional wages, though 79.48% believe that a woman should work to supplement the family income¹. In case of divorce or separation, this large

44. Anderson, J. N. D. - *Islamic Law in Modern India* (ed. Mahmood Tahir) p. 204.

45. Mahmood, Tahir—Muslim Family Law Reform 24.

46. Written statement submitted to the Hindu Law Committee 178 (1945).

1. Appendix I.

group of women without any earnings or savings of their own, will be deprived of all property which they acquired jointly. Even property which she had got at the time of the marriage from the husband or his family, is denied to her in some communities². All these factors increase the dependence of the wife. The fear of both financial and social insecurity prevents her from resorting to separation or divorce even when the marriage is very unhappy.

4.224 The demand for recognition of the wife's contribution in the way of house work is growing in many countries. England has passed the Matrimonial Proceedings Act in 1970 and the judicial decisions following, have emphasised the right of the wife to a share in the capital assets of the family. Lord Denning said that the wife "who looks after the home and family contributes as much to the family assets as the wife who goes out to work." He emphasised the importance of the home having been maintained by the joint efforts of both husband and wife and therefore "when the marriage breaks down it should be regarded as the joint property of both of them, no matter in whose name it stands³."

4.225 It is necessary that legal recognition be given to the economic value of the contribution made by the wife through house work for purposes of determining ownership of matrimonial property, instead of continuing the archaic test of actual financial contribution.

4.226 *We therefore recommend that on divorce or separation the wife should be entitled to at least one third of the assets acquired at the time of and during the marriage.*

Family Courts

4.227 The statutory law in all matrimonial matters follows the adversary principle for giving relief i.e. the petitioner seeking relief alleges certain facts and the respondent in his own interest refutes them. In addition to this, as we have already noticed, most of the grounds in these statutes are based on the 'fault principle' instead of the 'breakdown theory'. The combined result of these two factors is that strong advocacy is often the determining factor in these cases. This is particularly unfortunate in the field of custody and guardianship, where the welfare of the child is often relegated to the background and the decision arrived at, is based on the well argued points of the lawyer. In the present system, the judge has no option but to give his decision on the points raised and argued. If he were to base his decision on social needs or in the interest of one of the parties, it may be considered as biased and hence reversed in the appellate court.

4.228 There is also no distinction drawn between matrimonial causes and other civil suits.⁵ This frequently leads to unusual delay which stands in the way of conciliation and further embitters the relationship of the parties. In a case filed for restitution of conjugal rights by the husband, the appellate Judge referred to the "unfortunate fact that it has taken more than eight years for the appeal to come to me, such long delay...is extremely regrettable, because in such cases the time factor is of vital importance⁶."

4.229 Conciliation which needs to be the main consideration in all family matters, is not a guiding principle in the statutes dealing with them. The legislators of the Hindu Marriage Act recognised the need but made only a half hearted attempt to break away from the traditional approach. While they mentioned the need for conciliation, by emphasising that the duty of the judge is to make 'every endeavour to bring about a reconciliation between the parties', they failed to provide the infra-structure necessary, like pre-trial investigation, specialised opinion of psychiatrists or social workers, which would help the judge to perform this role. The results, therefore, have not been satisfactory. The Parsee Marriage and Divorce Act, 1936, by its provision of special courts, also attempted to adopt a different procedure but that experiment too has not been a success.⁸

4.230 The solution lies in establishing Family Courts for settlement of all problems dealing with personal law, where the role of the lawyer in adversary procedure is substituted by

2. Supra 3.203

3. *Wachtel v. Wachtel* (1973) 2. W.L.R. 366 and also the Report of the Law Commission on Family Property. (U.K.) (Law Commission No.52) (1973).

4. Exceptions are the Malabar Marriage Act and the Madras Aliyasantana Act, 1948 which permit dissolution at the instance of one party. Also the statutes dealing with mutual consent vide p.411.

5. *Kusum Lata v. Kamta Prasad* 1965-All.280, where the view expressed was that there was no difference between a petition under the Hindu Marriage Act and an ordinary civil suit.

6. *Shanti Nigam v. K.C. Nigam* op. cit. supra 4 : 093 No. 28 Also *Avinash Prasad v Chandra Mohini*, 1964 All.490 where too the delay was eight years.

7. Sec.23 (2)

8. Secs. 18 and 19 Parsee Marriage and Divorce Act, 1936 "much dissatisfaction has been felt with the special courts system. There have been instances of perverse verdicts...and judicial criticism of the system!" Irani, (P.K. The personal law of Parsis of India in *Family Law*) in *Asia and Africa* Anderson p.292.

4.231 In Japan the proceedings in a family Court are informal. There are usually two conciliation commissioners of whom one is usually a woman, and the proceedings are not open to the public.¹⁰ A person having an interest in the case should appear before the Family Court and only under very special circumstances will the appearance of a representative be permitted.¹¹

4.232 The need for a Family Court in India has been expressed by many scholars. The Law Commission has also referred to it. The recent report of the Legal Aid Committee has strongly urged the need for such courts.¹² In this connection, two institutions should be mentioned where the informal conciliation or compromise¹³ procedure has almost totally replaced the formal court procedure. In Rangpur (Gujarat) the 'Lok Adalat' deals inter alia with all family problems. Similarly, in Ahmedabad one section of the Jyoti Sangh work, dealing with all complaints pertaining to family problems, has acquired the status of a woman's court. They listen to both the parties and try to solve the problem by a compromise, failing which other alternative solutions are suggested.¹⁴

4.233 Indigenous system in India for settlement of disputes indicate that acceptance of this will be easier in our country. *We, therefore, strongly recommend that the established adversary system for settlement of family problems be abandoned and establishment of Family Courts be established which will adopt conciliatory methods and informal procedure with the aim of achieving socially desirable results.*

4.234 **Uniform Civil Code :** Article 44 of the Constitution states that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".

4.235 During the debate in the Constituent Assembly, several members had expressed the fear that implementation of this article might lead to the abrogation of their personal laws. Shri K.M. Munshi had explained, that there was nothing sacrosanct about the personal laws, as they covered secular activities like inheritance and succession. Dr. Ambedkar had also emphasised that India had already achieved uniformity of law over a vast area, and the only area of Civil Law which continued to have diverse laws were the areas governing matters like marriage and succession. The other point which had been argued was that such diversity violated the principle of Fundamental Rights that there should be no discrimination between citizens.

4.236 These arguments remain as valid today as when they were placed before the Constituent Assembly. The absence of a uniform Civil Code in the last quarter of the 20th century, 27 years after independence, is an incongruity that cannot be justified with all the emphasis that is placed on secularism, science and modernisation. The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights, and the Preamble to the Constitution which promises to secure to all citizens 'equality of status', and is against the spirit of national integration and secularism.

4.237 Our recommendations regarding amendments of existing laws are only indicators of the direction in which uniformity has to be achieved. *We, therefore recommend expeditious implementation of this constitutional directive by the adoption of a Uniform Civil Code.*

4.238 **Criminal Law :** The Penal laws of a country reflect more clearly the conditions of its society and its values than most other branches of law. It is, therefore, inevitable that the Indian Penal Code, enacted over a century ago¹ would reflect values and protect interests which are out of tune with the norms prevailing today.

9. Guide to the Family Courts of Japan (1972) and Twenty Two Years of Family Courts of Japan (1972).

10. Their selection is made from the Members of public on the basis of their social conscience and moral spirit—Hendasa, D.F.—*Conciliation and Japanese Law Tokugawa & Modern* (1965) and Rules for Determination of Family Affairs article 6.

11. Ibid. article 5. Lok Adalat, Rangpur—Law Commission, the Report-Vol. I—page 270.

12. "Family Courts and children's courts, separate from civil courts, should be set up, particularly in slum areas and in certain rural areas".—Chapter 10(1) (c) p.207.

13. Baxi, Upendra, from Takrar (Quarrel) to Karar (Compromise, lit agreement).

14. *Supra* n 9 p.205.

1. 1860.

4.239 Certain penal provisions in the law are definitely influenced by the established patriarchal system, the dominant position of the husband and the social and economic backwardness of women. By amendments to the original Code, attempts have been made to reflect the socio-economic changes in the country, particularly in the last twenty five years, but a major revision was needed. The Law Commission undertook this task and submitted the draft of a new Penal Code.²

4.240 Criminal law has always given the same protection to men and women in respect of their personal safety, individual liberty, property and reputation. But along with this principle of 'equality before law', it has made special provisions to protect women inter alia against attacks on their modesty. Some of these measures require more stringent punishment to meet the present needs of our society, than the law provides today.

4.241 Rude or insulting behaviour by itself does not come within the purview of criminal law, unless such behaviour is likely to lead to a breach of peace. But an example of special provision is that it is an offence whenever anyone by words, sounds or gestures "intends to insult the modesty of any woman"³. When enacted, it was not necessary to classify this offence as a serious one, and therefore, the punishment provided was fine and/or imprisonment for a period which could extend to one year. Today eve teasing in most cities has become a social evil. But the offence in the last century was categorised as a non-cognizable one and the police could not arrest without a warrant nor carry out any investigation without the specific order of a competent magistrate. This was one of the reasons why no effective steps could be taken to combat this menace effectively. The Law Commission took into account this drawback and recommended that it should be made a cognizable offence "so that in the changed social circumstances of the day, when women are coming out in larger numbers and taking greater part in various professional and business activities, they may have a sense of security."⁴ We welcome this change in the Criminal Procedure Code, particularly because, as we have discussed later, the lack of security of women acts as an obstacle to their taking up jobs away from home.⁵

In all legal system, sexual intercourse with a woman without her consent or against her will is regarded as a serious offence. Our law also does so by providing a punishment of imprisonment for life or imprisonment upto ten years, and fine for this offence of rape.⁶ Consent, which would negative the offence, is however very strictly interpreted and, therefore, consent, if given by the woman under duress or fraud, will be clearly disregarded by law. But under the present law, no provision is made for consent obtained by putting someone else in fear in the presence of the woman. The Law Commission has recommended adding this and the Indian Penal Code (Amendment) Bill, 1972 has included "anyone else present".⁷

4.242 We welcome this change as a woman would, in order to save her child from a threat of injury, give her consent to sexual intercourse. This cannot be her consent for consent "requires voluntary participation, not only after the exercise of intelligence, based on the

2. 42nd Report on Indian Penal Code (1971).

3. Sec. 509. "Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

4. 41st Report of the Law Commission on the Criminal Procedure Code.

5. Infra Chapter V and VI.

6. Rape—Sec. 375. "A man is said to commit 'rape' who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :-

First. —Against her will.

Secondly. —Without her consent.

Thirdly. —With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly. —With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. —With or without her consent, when she is under sixteen years of age.

Explanation. —Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. —Sexual intercourse by a man with his own wife the wife not being under fifteen years of age, is not rape."

7. Clause 157 the Indian Penal Code (Amendment) Bill, 1972 also proposes to add three new Sections providing punishment up to two years imprisonment or/and fine for (i) illicit sexual intercourse of public servant with a woman in his custody (ii) illicit sexual intercourse of superintendent, etc., with inmate of women's or children's institution, (iii) illicit sexual intercourse of manager or staff-member of a hospital with mentally disordered patient.

4.243 Originally, the age of consent for sexual intercourse was 10 in the case of a girl, but successive amendments raised this to 16⁹. The policy behind these changes was to protect girls of immature age from sexual intercourse.

4.244 The Medical Termination of Pregnancy Act 1971, however, hold that the termination of a pregnancy can be performed on a girl below 18 without her consent as long as the guardian's consent to the operation is obtained. In our view, consent to have sexual intercourse requires more maturity than to have an abortion, particularly when the girl is unmarried. The same age limit should be applied in both cases. In conformity with our recommendation¹⁰ made later, *we recommend that the age of consent below which a girl's consent to sexual intercourse is not legal should be 18, permitting some degree of flexibility to the court in borderline cases to decide whether the girl is mature enough.*

4.245 The offence of bigamy may be punished with imprisonment upto seven years and a fine. This indicates the seriousness of the offence. But as already discussed, limiting the right of initiating prosecution to only the aggrieved person, in our social context, defeats the purpose of the law. To remedy this we have recommended permitting any person to initiating prosecution for bigamy with the permission of the court¹¹. Apart from this, the present law restricts the jurisdiction of the court to the place where the bigamous marriage was performed or where the husband and wife last resided.¹² This is likely to cause difficulties to the wife. On being abandoned, a wife will usually either go back to her natal home or if feasible take up a job, which may be away from where she resided with her husband. The present position, therefore, restricts her right to prosecute in many cases. *We recommend that in addition to these two jurisdictions, provision be made for enquiry and trial for bigamy in a court within whose jurisdiction the wife is residing.*

4.246 Retention of adultery as an offence is perpetuating the principle enunciated over a hundred Years ago that the "dearest interests of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract....."¹³ The law today permits the husband to prosecute the 'adulterer' of his wife though it exempts the wife from punishment as an abettor. By doing this it brings out clearly the values of the last century which respected the dominant position of the husband and regarded the wife as his property. The Law Commission in its recommendation has only sought to remove the difference between the husband and wife by withdrawing the 'privilege' a woman enjoyed earlier of not being punished under this provision. Adultery in our opinion is a matrimonial and not a criminal offence. The aggrieved person is free to seek a remedy in divorce. Treating adultery as a criminal act, apart from reflecting outmoded values, sometimes deters person of the opposite sex from giving help to a woman oppressed by her husband. This was brought to our notice by several lawyers particularly in Andhra Pradesh. They mentioned many cases where lawyers, or houseowners were reluctant to assist a woman seeking divorce or separation from her husband because the latter had threatened to bring a charge of adultery against any man who gave her help.

4.247 *We recommend that continuing to regard adultery as a criminal offence, is against the dignity of an individual and should be removed from the Penal Code.*

Nationality

4.248 With the growing importance of human rights in the international sphere, the concept of nationality has come to acquire great importance. In Article 15 of the Universal declaration of Human Rights 1948, the General Assembly of the United Nations declared that 'every one has the right to nationality and that no one shall be arbitrarily deprived of that nationality.'

8. Rao Harnarain Singh vs. State 1958 Punj 123.

9. Raised to 12 Years in 1891; 14 Years in 1925 and finally 16 Years in 1949.

10. Infra Chapter VIII Section Family Planning Supra para 4.032

11. Supra Para 4.032

12. Sec. 181 Criminal Procedure Code.

13. Notes appended to the Draft Penal Code, 1836 Note Q 92-93.

4.249 Often the term nationality and citizenship have been used synonymously¹. The term citizenship refers to the relationship of an individual with the State from the internal aspect, while the term 'nationality' refers to similar relationship from the international aspect. Nationality is the status or quality of belonging to some particular nation or State. Therefore, the nationals of a State comprise all people who are politically members of the State but all of them may not possess full civic rights and privileges which are conferred on 'citizens.'² Nationality gives the State a limited right to protect its nationals while they are outside the country. The State is also entitled to allegiance from its nationals even when they are abroad as also obedience to certain laws.³

4.250 In India the matters of citizenship are governed by the Citizenship Act 1955 and the Rules 1956 as also certain provisions of the Constitution.⁴

4.251 The Citizenship Act 1955 deals with the acquisition and termination of citizenship. Under Sec 5(1)(c) a woman married to a citizen of India does not automatically become a citizen, but may make an application and be registered as a citizen. An application by a woman for registration as a citizen under the provisions requires documentary evidence that she has either renounced her previous nationality or has lost it by operation of law. If she has neither lost nor renounced it, her application must be accompanied by an undertaking that she will do so on getting her Indian citizenship. This requirement is essential as our law does not recognise dual citizenship. But the question of whether an alien woman married to an Indian citizen will get Indian citizenship or not is left to the discretion of the Central Government and can not be challenged in a court of law. This provision of the Act is in accordance with the United Nations Convention of 1957 on the Nationality of Married Women. Under the Convention, all contracting parties agree that the alien wife of a national may acquire the nationality of her husband, through specially privileged naturalisation procedures, but it must be at her request. The grant of nationality, however, may be subject to limitations imposed in the interest of national security or public policy.⁵ According to the information supplied by the Home Ministry, there were no statistics of the number of applications made by alien women married to Indian citizens or the number rejected, but '2151 alien women married to Indian citizens had been granted Indian citizenship under the Act'.

4.252 The lacuna in the Act is the absence of any provision dealing with the case of Indian women marrying foreigners. Her rights are governed by the general provisions which deal with renouncing Indian citizenship. Till she renounces it she continues to retain her Indian citizenship, even if her husband has renounced his. But it is in the interpretation of what constitutes renunciation that the hardship may occur. The provision which applies to all persons is that voluntary acquisition of citizenship of another country will amount to renunciation of Indian citizenship, as we do not accept dual nationality.⁶ On the face of it, the provision is unexceptionable but in practice this results in great hardship. If the law of the husband's country requires her to acquire her husband's citizenship by registration or any other way, her registration will be treated as a voluntary act as it is not by operation of law. This is unfortunate as often an Indian woman marrying a foreigner requires special protection. Some countries specifically provide that a woman "shall in no case lose her nationality as a result of her marriage to an alien". If for some reason according to the law of her husband's country, a wife is deprived of her nationality, she becomes stateless as she had already lost her Indian citizenship the moment she registered for her husband's nationality. There is consequently no protection given to an woman marrying an alien to prevent this situation of statelessness.

4.253 According to the Home Ministry, "No Indian woman has yet lost her Indian citizenship by the sole reason of her having married a foreign national", though they agree that if she "acquires her husband's nationality by some other act e.g. registration, her Indian citizenship will terminate." The Ministry is however silent on the point as to how many of them have lost their Indian nationality by this process.

1. "Nationality of an individual is his quality of being a subject of a certain State, and therefore its citizen" Oppenheim—*International Law* (8 ed) Vol. 1 642

2. Basu, D—*Constitution of India* (3rd ed) p. 60

3. e.g. Indian Penal Code sec. 4. The Provisions of the Code will apply to an Indian citizen irrespective of the place he commits the offence.

4. Art. 5.

5. Art. 3 U.N. Treaties Series Vol39 p. 87

6. sec. 8(1) and Sec. 9(1)

7. Sec. 3 Cambodian Civil Code—U.S. Immigration and Nationality Act 1952 also gives the same protection.

citizenship is voluntary or not vests with the Central Government, which will apply rules of evidence specified in the Rules⁸ of the Act. One such piece of evidence is the obtaining of a passport from the Government of another country. Merely getting a passport from a foreign country should not be termed a 'voluntary' acquisition. Even the Supreme Court⁹ has expressed this opinion. Many jurists have also challenged the 'Rule' which lays down that getting a passport is a voluntary acquisition. In cases of emergency where time is important, many women would opt for getting a passport which is quicker but this can scarcely be termed a 'voluntary' act. From the practical point of view, an Indian woman married to a foreigner and living outside the country, may have to return for purely personal reasons like illness of a family member, and in such a case one would not hesitate to travel on any passport—the end being important and not the means of getting there.

4.255 Hardship to an Indian woman by arbitrarily applying the rules is best illustrated by the citizenship laws of Afghanistan. According to Afghan law, a woman acquires her husband's nationality by marriage. As long as this is the law, our law will accept the position that an Indian woman has both Indian nationality and Afghan nationality as she has not voluntarily acquired Afghan nationality. But the moment she returns to India on an Afghan passport, she loses her Indian nationality, because she will be deemed to have voluntarily acquired the citizenship of Afghanistan. Under no circumstances should she become stateless. *We therefore recommend that the Citizenship Act be amended to provide a special rule for Indian women marrying aliens, stating that she will in no case lose her Indian nationality as a result of her marriage to a foreigner. (a) Further, that her acquiring the passport of her husband's country should not be regarded as evidence that she has voluntarily acquired another nationality; (b) In the eventuality of her having been declared stateless, she should revert back to Indian citizenship automatically.*

4.256 Another rule which operates against the interests of Indian women marrying foreigners, is that their children cannot be regarded as Indian citizens, because the Act clearly states that a child will be considered an Indian citizen only if his father is one at the time of his birth. Explaining this rule then Home Minister had said¹¹ that this provision was to prevent dual or multiple nationality and not to discriminate against women, and in any case, the cases of Indian women marrying foreigners was very rare. This does not really explain the basis of the rule. Where the father and mother are separated and the mother is either *de jure* or *de facto* guardian, there is no justification to have the rule that the child's nationality will be transmitted through the father. As a mother may be a legal guardian in preference to the father, if it is in the interest of the child, there can be no justification for this rule. *We therefore recommend the amendment of sec. 4(1) of the Citizenship Act to read as follows: "A person born outside India on or after the 26th January 1950, shall be a citizen of India by descent if his father or mother is a citizen of India at the time of his birth."*

8. Sub-sec. 2 of sec. 9 Citizenship Act to be read with Rule 30 & Rule III of Schedule III—Citizenship Rules.

9. Mohamed v Commissioner of Police 1965—S.C. 623

10. Seervai—Constitutional Law of India—pp: 137, 146

11. Lok Sabha Debates 1955 Vol. 9—p. 1319

GROUNDS OF DIVORCE UNDER PERSONAL LAWS IN "INDIA"

(1) <i>Hindu Marriage Act 1955 By Husband or Wife. S. 13</i>	(2) <i>Special Marriage Act, 1954 Section 27 By Husband or Wife</i>	(3) <i>Indian Divorce Act, 1869 By the husband (S. 10) By the Wife (S. 10)</i>	(4) <i>Muslim Law By the husband. Talak By the wife Dissolution of Muslim Marriage Act, 1939. Section 2</i>	(5) <i>Parsi Marriage and Divorce Act, 1936 Sec. 32</i>
1. Living in Adultery.	1. Has committed adultery.	S. 10 That the wife has, since the solemnization, there of been guilty of Adultery.	1. Whereabouts of the husband have not been known for a period of 4 years.	1. Non consummation of marriage within one year after solemnization owing to the wilful refusal of the defendant.
2. Ceased to be a Hindu by conversion to another religion.	2. Desertion without cause for 3 years.		2. Failure to provide maintenance for 2 years.	2. That the defendant has been of unsound mind at the time of marriage and has been habitually so up to the date of the suit.
3. Incurably of unsound mind for a continuous period of 3 yrs.	3. Imprisonment for 7 years or more for an offence as defined in the I.P.C. provided that the respondent has prior to the presentation of the petition undergone at least 3 years imprisonment.	That her husband has exchanged his profession of Christianity for the profession of some other religion and gone through a form of marriage with another woman.	3. Sentenced to imprisonment for 7 years or upwards.	3. That the defendant was at the time of marriage pregnant by some other person.
4. Virulent and incurable leprosy for not less than 3 yrs.	4. Treated the petitioner with cruelty.	Has been guilty of incestuous adultery, or bigamy with adultery, or of marriage with another woman with adultery, or, of Rape, Sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce a Mensa et thoro, or adultery coupled with desertion without reasonable cause for 2 years or upwards.	4. Husband has failed to perform without cause his marital obligations for a period of 3 years.	4. That the defendant has committed adultery or fornication or bigamy or rape or an unnatural offence.
5. Venereal disease in a communicable form for 3 years.	5. Incurably of unsound mind for a continuous period of 3 years.		5. Husband was impotent at the time of the marriage and continues to be so.	5. That the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with V. D. or where the defendant is the husband has compelled with wife to submit herself to prostitution.
6. Has renounced the world by entering any religious order.	6. Venereal disease for 3 years in a communicable form, the disease not having been contracted from the petitioner.		6. Insanity of husband for 2 years or is suffering from leprosy or a virulent disease.	6. Seven years imprisonment or an offence defined in I.P.C.—provided that the defendant has undergone at least one year's imprisonment.
7. Not been heard of as alive for 7 years.	7. Suffering from Leprosy for 3 years, the disease not having contacted by the petitioner.		7. That the wife having been given in marriage by her father or guardian before 15 years, repudiated the marriage before attaining 18 years... provided the marriage was not consummated	7. Desertion for 3 years.
8. Non resumption of Cohabitation for 2 years after the passing of the decree of judicial separation.	8. Not been heard of as alive for 7 years.		8. That husband treats her with cruelty.	8. That the decree or order for separation has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff and the parties have not had marital intercourse for 3 years or more since such decree or order.

CHAPTER V

ROLES, RIGHTS AND OPPORTUNITIES FOR ECONOMIC PARTICIPATION

5.1 The status of any given section of population in a society is intimately connected with its economic position, which (itself) depends on rights, roles and opportunities for participation in economic activities. The economic status of women is now accepted as an indicator of a society's stage of development. This does not, however, mean that all development results in improving women's economic status. Patterns of women's activity are greatly affected by social attitudes and institutions, which stem from the social ideology concerning basic components of status in any given period. These may differ according to the stage of economic development.¹ For example, at certain stages of development, capacity for work may provide the highest claim to status. At other stages, when society becomes inegalitarian, leisure may substitute work as a basic indicator of status.

5.2 The debate regarding women's economic role and the need for equality of rights and opportunities for economic participation has centred round three basic arguments:

(a) *Human rights and social justice*: Women's economic subjugation, or dependent position is the result of a rigid distinction in men's and women's roles in society and leads to exploitation.

"The emancipation of women and their equality with men are impossible and must remain so as long as women are excluded from socially productive work and restricted to house work, which is private".²

"Today the sole occupation of a woman amongst us is supposed to be to bear children, to look after her husband and otherwise to drudge for the household.....not only is the woman condemned to domestic slavery, but when she goes out as a labourer to earn wages, though she works harder than man she is paid less".³

(b) *Utilisation of human resources*: It is in the interest of a society to make full and most effective use of its human resources. The full benefit of development can only be realised with people's participation and the economic role of women cannot be isolated from the total frame-work of development.

"Discrimination against women is incompatible with human dignity and the welfare of the family and of society, prevents their participation on equal terms with men in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and humanity."⁴

"To maintain the proper quantitative balance between various economic activities was one of the principal functions of the economic system, which, it was felt, should operate to give equal freedom of choice to men and women. The orientation of a society as a whole regarding the desirability that women should play an equal part in the country's development was taken as very important precondition for the advancement not only of the women but of the country as well."⁵

(c) *Implications of social change*: Socio-economic and political change creates a need to extend the spheres of knowledge and activity of all members of a society. Modern trends in demographic and social changes call for a redefinition of women's roles in family and society.

1. "The present division of labour between the sexes in member countries of the U.N. is also the result of special factors, such as basic difference in local culture, customs and type of Economy"—Report of the Inter-regional Meeting of Experts on the Integration of Women in development...UN Doc.St/SOA

2. Marx, Karl and Engels, Friedrich—Selected works Vol. II, p. 310

3. Gandhi, M.K.—Young India—26.2.1918, quoted in Kasturba Memorial-p. 181

4. Declaration on the Elimination of Discrimination Against Women—United Nations-1967

5. Supra n. 1-p. 5

Changes in the age of marriage, size of families, urbanisation, migration, rising costs and standards of living and the call for greater participation in the decision making process within the family and the wider society, all lead to subtle but major changes in roles and responsibilities. These have to be recognised and provided for in order to avoid social crises. Absence of adequate opportunities and the inability of women to meet these challenges because of social handicaps present obstacles to a balanced and smooth adjustment to the process of social change.

5.3 The opposition to increasing opportunities for women's participation in economic activities springs firstly from a conservative view regarding women's 'proper' role in society, where 'proper' imposes clearly, and often rigidly defined limits to the activities that women may or may not perform. For example, the elite classes in most societies limited the activities of women to the home only. In the same societies, women of the labouring sections did participate extensively in economic activities outside the home, but their spheres were often clearly defined by a customarily accepted division of labour between the sexes. The patterns of this division have however varied, not only from society to society but among different sections of people within the same society.⁶

5.4 Secondly, this opposition comes from situations of chronic unemployment, or apprehensions of unemployment, where the prospects of a large-scale entry of women in the labour market is regarded as a potential cause of economic disorganisation. A typical manifestation of this attitude is the theory of women's *marginal* role in the economy.

"This concept of women as a sort of balancing force in the family or national economy has a whole series of practical implications which have the net effect of making it difficult for women to become integrated as a permanent part of the work force and of rendering them particularly susceptible to unscrupulous or discriminatory treatment in the employment market."⁷

"In countries which are marked by labour surpluses, the need for providing employment for women when many men are available for work raises questions which cannot admit of categorical answers. It is in these developing countries that incomes by and large are low and the family requires the assistance of an additional earner. Where social conventions do not weigh oppressively against bringing women into paid employment, the family income can best be supplemented by a draft on the female population in the working age group."⁸

5.5 In agrarian societies the family is the unit of production. The place of work being close to the home, men, women and children all participate in the production process. As a society moves from the traditional agricultural and household industry to organised industry and services, from rural to urban areas, the traditional division of labour ceases to operate, and the complementary relationship of the family is substituted by the competitive one between individual units of labour. The scarcer the jobs, the sharper is the competition. Technological changes in the process of production call for acquisition of new skills and specializations which are very different from the traditional division of labour. Women, handicapped by lack of opportunities for acquisition of these new skills, find their traditional productive skills unwanted by the new economy.

I WOMEN IN THE INDIAN ECONOMY

5.6 A review of the economic roles played by women in India reveals certain clearly distinct trends. The traditional village community in India consisted of the cultivators, the artisans and those performing menial services. In each of these, the women played a distinctive and accepted role in the process of earning a livelihood for the family, putting in sometimes more, sometimes less and often an equal amount of labour in both production and marketing of products of agriculture and handicrafts. Markets were mostly local or within accessible distance. By and large this pattern is still found prevalent in the traditional forms of the

6. Mead, Margaret, *Male & Female*, 1950, p. 190 & Boserup, Ester, *Women's Role in Economic Development*, 1970, p.16.

7. *Women Workers in a Changing World*-International Labour Conference, 48th Session, I.L.O. 1963, p. 19.

8. Report of the National Commission on Labour, Government of India, 1969, p. 379.

handicrafts mainly produced by women (baskets, hand woven fabrics, etc.) are still marketed by women in most parts of India. Amongst most tribal and scheduled caste communities, the production of handicrafts, as well as their marketing is mainly carried on by women. In Nagaland, Manipur and among the Galong in Arunachal Pradesh weaving is exclusively practised by women. It may be noted that hand-woven fabrics constitute an important export of these States and is the most important export item of Manipur. Though weaving is a traditional industry in other parts of India also, the general pattern is for women not to weave, but to take part in other operations.

5.7 Among the agricultural classes in most parts of the country and particularly among marginal and landless agriculturists, earning a livelihood is still a family endeavour with or without division of labour between men, women and children. The patterns of women's participation vary according to regional and cultural norms. Throughout the Himalayan region, the major role in agricultural production is played by women. In areas where the 'jhum' (shifting) system of cultivation still prevails, the men's contribution to the production process ends with the chopping down of trees and burning the soil. The entire process of dribbling (planting) and gathering of crops is done mainly by women. With terraced cultivation the men's activities increase as they usually undertake ploughing, but women engage in all other agricultural activities. Among the Khasis of Meghalaya, women dominate the economic process and even educated women holding high positions in offices do not hesitate to do manual work in agriculture.

5.8 There is a general taboo on women engaging in ploughing but the degree of taboo differs from region to region. In Himachal Pradesh women informed us that sometimes they have to undertake ploughing in the absence of male members in the family and inability to hire male labourers. But this could result in some loss of social prestige. In most parts of the country the jobs traditionally done by women are generally transplanting, sowing, weeding, harvesting, winnowing and threshing.

5.9 The cultural norms that influence women's engaging in manual labour outside the home vary according to their position in the social hierarchy. Historians and sociologists agree that withdrawal of women from active participation in manual labour outside the home is a consequence of social stratification¹. Gradually this process of excluding women from labour outside the home has itself become a symbol of higher social status².

5.10 The general decline of handicrafts from the 18th century led to increasing pressure of population on agriculture and increase of poverty in the rural sector resulting in migrations. The Royal Commission on Labour in India attributed the migrations from village to city to three causes: economic pressure, the decay of village crafts and the social disabilities of the outcastes. The first cause, that of economic pressure was the most important. According to the Royal Commission on Agriculture, "the numbers who have no other employment than agriculture are greatly in excess of what is really required for thorough cultivation of the land."

"The driving force in migration comes almost entirely from one end of the channel, i.e., the village end. The industrial recruit is not permitted by the lure of city life or by any great ambition. The city as such has no attractions for him, and when he leaves the village he has no ambition beyond that of securing the necessities of life. Few industrial workers would remain in industry if they could secure sufficient food and clothing in the village; they are pushed, not pulled to the city³."

When there was prospect of employment of the women also as in plantations, mines, jute and the textile industry, the migration was of families. Similarly the women migrated with their husbands who went as indentured labourers to other colonies in the British Empire. When only men migrated the women left behind continued to depend on agricultural work as cultivators or wage labourers.

5.11 In the initial phase of industrial development, most industries continued the traditional pattern of family participation and employed a considerable number of women and children.

1. Altekar, A.S.-Ideals and Realities of Women's position in Social Life; in *Great Women of India*, 1963.

2. Gadgil, D.R. *Women in the Working force in India* 1965 p.7 and Epstein, Scarlett, *South India, Yesterday, Today and Tomorrow*-Ch. 7.

3. The Report of the Royal Commission on Labour, 1931.

While they confined them to certain unskilled and semi-skilled types of work at lower rates of wages, in terms of proportion of total labour employed, women constituted an important segment of the labour force in these industries.

5.12 Technological changes have affected the employment of women in these industries adversely. In the absence of training opportunities, the women, already handicapped by illiteracy and lack of mobility cannot acquire the new skills demanded by modern industry. This creates a gap in the earning power of men and women and is responsible for the widespread belief that female labour associated with backward economies is less productive⁴.

5.13 Development has, however, opened some new avenues to women. Modernisation, social change and education, have enabled some women to enter new profession, or occupations which were totally closed to them earlier. For example, the presence of women in the public services, and other jobs in the tertiary sector is now an accepted fact. For certain limited jobs, women are even preferred.

5.14 Social attitudes to women's work reflect to a great extent the current needs being faced by society. In some sections, economic pressure has precipitated withdrawal of the traditional prejudice against women working outside the home. Since this is also the class which has generally been more exposed to education and other instruments of modernisation, they have benefited more from change and development unlike the women whose world has remained confined to the limits set by tradition.

5.15 These factors pose difficulties in using any uniform indicators to assess the economic status of women. Apart from the limitations of quantitative data, a macro-analysis of women's economic participation purely in quantitative terms would not be valid for all sections of women. The heterogenous character of the Indian economy, and the uneven rates of development have had varying degrees of impact on different segments of the labour force. It would "not justify aggregation into a single dimensional magnitude"⁵. The different segments need to be estimated separately, taking into account such important characteristics as region (State), sex, age, rural-urban residence, status or class of workers and educational attainments⁶. The relative importance of these components differ considerably between rural and urban areas.

5.16 In the Committee's opinion any appraisal of women's economic roles to be meaningful must take into account the socio-economic status of different categories of workers. The largest of these categories consists of the women below subsistence level. We have attempted to identify some components of this vast group who are generally found in unskilled work, in both the organised and unorganised sectors. In rural areas, they are the landless agricultural labourers, members of households with uneconomic holdings, those engaged in traditional menial services performed by particular castes. A large majority of workers in traditional village and cottage industries also come within this category.

5.17 In urban areas they consist largely of migrants from villages, and members of families whose position has deteriorated due to the break down of joint families. Some of these families, in previous generations, used to work in urban areas but left their families in the village to share in agricultural incomes of joint families. A rapid rise in the population of rural areas, coupled with a steeply rising cost of living has made this difficult now, and urban workers are being compelled to bring their families to the cities along with them. The women of this class work mainly as part-time domestic servants, or in various unorganised industries. Majority of them are handicapped by lack of education or any other skills that could fit them for work in urban areas.

5.18 The second category is a most heterogenous class. It consists of both white collared and manual workers whose existence ranges from subsistence to security. Most of them are to be found in industries, services and professions. Some are self-employed. They are mostly found in urban areas. In the rural areas, they consist of land owning cultivators and the handful of women engaged in health, education and welfare services. The level of aspiration and employment opportunities of women in this group differ with their social background and educational attainment. All of them need employment either to keep their families from

4. Supra n. 8.

5. Report of the Committee on Unemployment 1973-Volume 1 (Part-A) -Para 4.3.

6. Report of the Committee of Experts on Unemployment Estimates. (1970) Para 3.34.

starvation or to ensure a somewhat better standard of living. Some are able to achieve security by improving their earning power, others remain handicapped by lack of education and other skills.

5.19 The third category is not burdened by insecurity. It consists of the minority of women who seek employment mainly to improve their standard of living. Some do so to achieve personal independence and satisfaction. They are generally highly educated, enjoy high status both in their families and work life, and are mostly found in the higher rungs of services and professions. In recent years, a few have entered the field of commerce and business management.

5.20 *Limitations of data:* The three major sources of data on employment and unemployment are the Census, various rounds of the National Sample Survey and the Employment Market Information Programme of the Directorate General of Employment and Training. The comparability of census data is limited because of conceptual differences in the definition of workers, and lack of uniformity in cross-classification of workers by sex, 5-year age-groups, educational level, marital status and industry. The National Sample Surveys apart from the smaller size of the sample and shorter reference periods, do not take into consideration the sharp seasonal variations in the labour force participation rates, which are even more pronounced in the case of women, specially in the agricultural sector. Starting from the 11th Round (1956) the N.S.S. started collecting data on persons 'not seeking but available for work', which is of particular significance for rural women because of the predominance of self-employment, unpaid-family work and limited opportunities for paid employment in rural areas. Data on women workers from these two sources also from reporting bias, particularly for the large unorganised sector of the economy where the majority of women are employed and does not permit an evaluation of the total women labour potential and its relevant characteristics. A sizeable proportion of the labour input in household enterprises is provided by family workers who have only partial attachment to the labour market. While their inclusion in the labour force would be misleading, their total exclusion would also fail to reflect the reality of the economic situation. As an example, we may mention the case of women from hawkers' families, who help the family enterprises by actually producing the material for sale. As this work is done within the home it is not recorded as economic activity. Expert committees⁷ on unemployment have been repeatedly emphasising the need to use identical concepts for collecting information on different sections of women workers to understand the complex problems of employment, unemployment and under-employment.

5.21 The Employment Market Information programme of Directorate General of Employment and Training covers all public sector establishments and private sector establishments which employ 10 or more workers, excluding all self-employed persons and unpaid family workers engaged in small non-agricultural establishments, agriculture, small plantations and private construction activities. These estimates are useful only for assessing the employment situation in the urban organised sector. The National Employment Service has not yet penetrated the rural areas. Even in the urban areas its coverage of women is minimal. The National Sample Survey and the National Employment Service data are not comparable because they adopt different norms for classifying educational level of workers.

Trends in Economic Participation

5.22 The long term trend in economic participation of women indicates an overall decline both in percentage of workers to total female population and in their percentage to the total labour force after 1921 (Table I). When we look to their distribution in different sectors of the economy, however, there are significant variations. Explanations of these trends have to be found in the totality of interconnected factors both (a) during the pre-1947 and post-1947 period separately, and (b) the nature of development of our economy from the first to the second period. We can only briefly describe the major factors.

5.23 Agriculture continued to receive the burden of the surplus labour force all through the period of 71 years. Variations in participation rates in agriculture during different decades mainly show a slight decline before 1947 and a steady rise after 1947. This is generally explained by the pattern of industrialisation of our country⁸.

7. Supra n. 5 & 6.

8. Vide Sections on Non-Agricultural Occupations and Organized Industry.

TABLE 1*
Trend in Distribution of Women Workers 1911—1971 (In thousand)

Year	Agriculture	Industry	Service	Total	Female workers as % to total labour percentage to total female population	
1	2	3	4	5	6	7
1911	30,898 (73.9)	6,137 (14.7)	4,767 (11.4)	41,802 (100)	33.73	34.44
1921	30,279 (75.5)	5,409 (13.5)	4,407 (11.0)	40,095 (100)	33.73	34.02
1931	27,177 (72.3)	5,147 (13.7)	5,276 (14.0)	37,600 (100)	27.63	31.17
1951*	31,062 (76.8)	4,554 (11.2)	4,923 (12.1)	40,539 (100)	23.30	28.98
1961	47,274 (79.6)	6,884 (11.6)	5,244 (8.8)	59,402 (100)	27.96	31.53
1971	25,060 (80.1)	3,307 (10.5)	2,931 (9.4)	31,298 (100)	11.86	17.35

1941 Figures are omitted as they are based on 2% of the population on sample basis.
Note: Figures within brackets denote percentages of women workers.

* Figures do not include Jammu and Kashmir.

SOURCE: (1) Census of India 1961—Paper No.1 of 1962—Final population.
(2) Pocket Book of Population Statistics—Census Centenary 1972 totals.

5.24 The participation of women in industry, however, shows a general stagnation, and a distinct decline after 1961. One reason for this lies in the transformation of the role of household and small scale industry in the national economy. It is well-known that ruination of domestic industry has been a constant factor of our history during the British period, which naturally affected both men and women. But domestic industries like hand-spinning, weaving, paper, jute articles etc. which were relatively more female labour intensive were more affected by the process than industries like smithy, carpentry, pottery etc. which hardly used any female labour. In the period before 1947 both displacement of labour from small scale and cottage industry including domestic industry and corresponding increase in labour force employed in organised industries moved at a slower pace. During the 30 year period between 1917 and 1947 the total number of industrial enterprises increased from 4,827 to 11,961 and the number of small enterprises rose from 538 to 2990. Of the total participation in industry on the eve of 1947, the overwhelming majority was constituted by domestic industry.

5.25 In the post-independence period with rapid increase in the modern and organised sector of industry, the share of household industries declined rapidly. Since they constituted the biggest traditional source of women's employment outside agriculture, women were the greatest victims of this process of economic transformation. Many of these household industries like hand weaving, oil pressing, rice pounding, leather, tobacco processing etc. had to face stiff competition from factory production.

5.026 The other reason for the exclusion of women from industry was technological change and rationalisation of the processes of production which reduced the demand for unskilled labour. Since the majority of women in the modern industrial sector were employed as unskilled workers they were the main victims of this change.

5.27 Column three of Table I however requires some explanation. According to census occupational categories, there has been a marginal increase in the proportion of women in white collared occupations, e.g. doctors, nurses and other health personnel, teachers, office workers etc.⁹ The effect of this has however, been neutralised by the virtual disappearance of women from trade and commerce. With the development of modern organised markets and increase in the number of intermediaries and wholesale trade, the marketing of the

9. This has been discussed in detail in section IV (B) of this chapter.

products of traditional and household industry, which was one of the important avenues of earning for women in the earlier period has been gradually disappearing. As a result, the participation rate of women in the service sector has recorded a steady decline.

5.28 During the decade 1961-71 while the male and female population increased by 25% and 24% respectively (20% and 21% in the working age-group), the number of men workers increased by 15.2% while that of women declined by 41.4%. It has been argued that this decline is the result of changes in the definition of workers adopted by the Census of 1971. The Census basically measures the level of employment of men and tends to ignore the inter-changeable roles of women as housewives and gainful workers. Since many of them participate in family enterprises as unpaid helpers, changes in the definition of workers which exclude secondary activity has an adverse effect on the recording of female employment. For example the Census of 1971 included 2.3 million women among non-workers, whose main activity was house work but who were engaged in some secondary activity in rural and urban areas as indicated in Table II.

TABLE II :
Number of Women Engaged in Secondary Work in Rural and Urban Areas Classified by their Main Activity, 1971 Census

Main Activity	Secondary Work					Total
	Total Rural Urban	Cultivators	Agricultural Labourers	Household industry	Non-Household Industry trade business or service	
1	2	3	4	5	6	7
Cultivators	Total	—	100	34	36	169
	Rural	—	99	33	35	167
	Urban	—	1	—	1	2
Agricultural Labourers	Total	18	—	32	46	96
	Rural	18	—	30	44	92
	Urban	—	—	2	2	4
Household Industry	Total	11	26	1	3	41
	Rural	11	25	1	3	40
	Urban	—	1	—	—	1
Non-Household Industry-trade business or service	Total	11	26	3	7	46
	Rural	11	24	2	5	41
	Urban	—	2	1	2	6
Non-workers	Total	444	1,190	347	330	2,311
	Rural	439	1,163	282	253	2,137
	Urban	5	27	65	77	174

Source : Estimated from 1 per cent sample data, Census of India, 1971, series, 1—India, Paper 3 of 1971. Economic Characteristics of Population (Selected Table) Page 83.

Note : Total may not tally due to rounding off. Figures in hundreds.

5.29 While the 1961 definition of workers was regarded as very liberal, according to census analysts it did not make much difference in the collection of data except in the States of Andhra Pradesh, Mysore and Tamil Nadu. It may be noted that the reported female activity rate of 27.5% usually accepted as an over estimate, agrees with the rate of 27.72% in the comparable round of the National Sample Survey of the same year. As for the rather restrictive definition of 'workers' in the Census of 1971 even when the figures are corrected by the inclusion of secondary workers, the fall in activity of females remains almost the same. We may, therefore, conclude that the declining trend has been a continuous one to which the 1961 figures are the only exception. The ratio of female to male workers has registered an overall decline in all categories in the rural and in most categories in the urban areas (Table III).¹⁰

10. Dandekar, Kumudini—Employment of Women in India—Paper submitted to IUSSP Conference, Liege (Belgium)—1973.

TABLE III
Ratio of Female to Male workers According to Activity in 1961 and 1971

Category of Activity	Female workers per 100 male workers			
	Rural		Urban	
	1961	1971	1961	1971
1	2	3	4	5
1. Cultivators	50.10	13.34	38.88	9.25
2. Agriculture labourers	81.84	49.92	85.62	41.60
3. Livestock	31.22	23.43	20.06	14.41
4. Mining & Quarrying	—	17.93	—	11.96
5. Industry				
(a) Household	63.77	27.96	61.33	26.87
(b) Other than household	19.33	14.42	7.70	6.14
6. Construction	14.96	9.89	11.59	8.89
7. Trade & Commerce	19.52	8.04	6.78	4.89
8. Transport etc.	1.93	2.16	2.35	2.46
9. Other services	35.25	15.41	20.53	18.70

5.30 The sharp difference in the participation rates of men and women is reflected in all the age-groups except the youngest (0-14) both in 1961 and 1971. The data also indicates wider difference in the women's participation rates between rural and urban areas in all age-groups, than in the case of males. When we compare women's participation in 1961 with that in 1971, the decline is clear in all the age groups.

TABLE IV
Age Specific Working Force—Participation Rates 1961 & 71
(a) 1961

Age Group	Males			Females		
	Total	Rural	Urban	Total	Rural	Urban
1	2	3	4	5	6	7
Total	57.1	58.2	52.4	28.0	31.4	11.1
0-14	9.4	10.6	3.5	6.6	7.6	1.6
15-34	81.1	91.1	76.9	43.6	49.8	15.8
35-59	96.7	97.5	93.3	47.6	49.6	22.9
60 plus	76.6	79.9	58.4	22.4	24.3	11.4

(b) 1971

Age Group	Males			Females		
	Total	Rural	Urban	Total	Rural	Urban
1	2	3	4	5	6	7
Total	52.5	53.4	48.7	11.8	13.1	6.6
0-14	6.6	7.5	2.8	2.6	3.0	0.8
15-39	82.9	86.1	72.8	18.9	21.3	10.1
40-59	95.8	96.7	92.5	21.2	22.8	13.8
60 plus	73.8	77.4	55.4	11.5	11.3	6.4

Source : Census of India 1971. Paper of 1972.

5.31 Table V presents state-wise percentage of female workers to their total population in 1961 and 1971 separately for rural and urban areas. It is obvious that the participation rates have recorded an overall decline in all States for both rural and urban areas though in most states the decline is sharper in urban areas.¹¹ The other significant aspect of this decline is the variation in the order of states according to level of participation over this decade. Kerala, whose position in rural participation was the last in 1961 has improved its position to 11th in 1971 and in urban participation from the 21st position in 1961 it has improved to 5th in 1971. Manipur has also improved its position in rural participation from 21st to 4th and in urban from 22nd to 1st. Rajasthan, on the other hand, lost position from 9th to 13th in rural participation but has improved its place in urban participation from 20th to 7th. Similar is the case for Andhra Pradesh, Mysore, Tamil Nadu. Maharashtra has, however, improved its position in the rural sector but lost ground in the urban sector.

5.32 Table VI indicates that while the trends vary in different industrial categories the decline of women's participation in most industries is not merely in percentages and ratios but also in absolute numbers. The distribution of women workers by broad categories.

TABLE V

Statewise Percentage of Female Workers to Their Total Population in 1961 and 1971 in Rural and Urban Areas

Sl No.	State/Territory	Rural				Urban			
		1961		1971		1961		1971	
		%	Rank	%	Rank	%	Rank	%	Rank
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	64.32	1	31.69	2	52.40	10	11.60	4
2.	Assam	53.98	17	6.36	18	55.36	5	4.32	20
3.	Bihar	56.00	14	11.04	14	51.74	12	6.45	15
4.	Gujarat	55.30	15	13.58	12	48.37	19	6.32	16
5.	Himachal Pradesh	63.47	3	22.58	6	56.44	3	7.61	13
6.	Jammu & Kashmir	59.28	10	5.94	19	50.78	15	3.60	22
7.	Kerala	47.42	23	14.92	11	45.98	21	11.20	5
8.	Madhya Pradesh	61.58	5	23.73	5	52.44	9	8.09	11
9.	Maharashtra	58.07	12	28.70	3	54.83	6	9.72	9
10.	Mysore	60.40	8	17.60	9	51.57	13	10.08	8
11.	Nagaland	61.04	6	50.22	1	52.13	11	9.08	10
12.	Orissa	61.02	7	8.55	16	57.22	2	10.73	6
13.	Punjab	53.44	19	1.27	23	50.93	14	3.03	22
14.	Rajasthan	60.13	9	11.95	13	48.04	20	10.45	7
15.	Tamil Nadu	62.19	4	21.19	7	53.16	7	16.40	2
16.	Uttar Pradesh	59.20	11	9.54	15	51.74	12	4.16	21
17.	West Bengal	53.46	18	5.64	20	55.38	4	4.75	19
18.	Andaman & Nicobar	64.27	2	8.01	17	66.17	1	7.25	14
19.	Delhi	47.82	22	5.37	22	52.30	8	5.18	18
20.	Goa, Daman & Diu	71.77	20	29.78	19	48.75	26	13.04	3
21.	Manipur	47.93	2	27.32	10	40.99	22	18.00	1
22.	Pondicherry	57.13	15	15.51	10	48.74	17	7.80	12
23.	Tripura	55.24	16	52.39	21	46.84	18	5.42	17

Note—Figures for 1971 are correct by including 'non-workers' with secondary activity.
SOURCE—Report of the Committee on Unemployment, 1973 Appendix IX.

11. Table 31 in Chapter II gives the participation rates in selected cities with population of over 1 million in 1971.

shows their increasing dependence on agriculture and a decline in both the industrial and the service sector.

5.33 The variations in trends according to mode of classification of sectors confirms our opinion that the census categories are not really useful for any proper assessment of the nature and extent of women's participation in our economy. This is corroborated by the views of the expert committees on unemployment¹².

5.34 The number of women in the organised sector constitutes a very small fraction of the total women working force. In 1971 out of 31 million women workers 19.24 lakhs only were employed in the organised sector constituting approximately 6% of the total women workers. A predominant section of this group were engaged in the tertiary sector and the services alone accounted for 50%¹³. In view of the difference in characteristics and problems mentioned earlier, our classification of women workers for purposes of trend analysis divides them broadly into the unorganised and organised sectors instead of the 9 industrial categories adopted by the Census. We take up the unorganised sector first as it accounts for the overwhelming majority of women workers in the country.

II Women in the Unorganised Sector

5.35 94% of the women workers are engaged in the unorganised sector of the economy, 81.4% in agriculture, and the rest in non-agricultural occupations. The major problems that affect them spring from the unorganised nature of all industry in this sector. They are outside the reach of most laws that seek to protect the security and working conditions of labour. Labour organisations are mostly absent. Where they do exist, they are still in a formative stage and have had little impact on women.

5.36 The gradual commercialisation and modernisation of the economy and the efforts made by Government to replace traditional by modern institutions of credit and marketing, to stabilise ownership of land, and to maintain minimum wages, have by no means succeeded in 'organising' the production relations to control the degree of exploitation of the weaker section. Nor have they solved the problems of low productivity, poverty, unemployment and under-employment. Traditional modes of production relations which defy modern classifications into employers and employees¹, labour and capital, rent and interest, still prevail in industries in this sector. The impact of this intermixture has been greater on women. Wages of women are uniformly lower than those of men, even within the low wage structure of all workers in this sector.

5.37 Many of them are unpaid family workers, both in family enterprises, and in wage employment where their contribution to the family earnings as helpers of the men earners is not always realised, or admitted. These unpaid family workers are predominantly women and children. Most of them fulfil dual roles by engaging in economic and household activity. More than half of the women who enter the labour force before the age of 15 are unpaid family workers, as compared to one-third of the men in the same category. Three estimates are available regarding the proportion of unpaid family workers in the labour force. According to the National Sample Survey (except in the 19th round based on Integrated Household Scheduler) the unpaid family workers in rural India were reported to form between 15 to 17 per cent of the male-labour force and between 41 to 49 per cent of the female labour force. Despite the variation in the concepts and the timings of the survey, the proportion of unpaid family workers shows a remarkable steadiness in the various rounds.**

The proportion of unpaid family workers aged 10 and over, estimated from 1961 census, was about 14% for males and 41% for females. The degree of attachment to the labour force differs in the case of unpaid family workers. The NSS data from the 14th and 15th Rounds suggested that in rural India the proportion of females in the labour

12. Supra n. 13 and 14.

13. Women Employed in the organised sector, 1971. Directorate General Employment and Training, Government of India, Ministry of Labour.

1. National Commission on Labour-Chapter 29.

** The various NSS Rounds were undertaken during the time specified below:

14th Round July 1958-59

15th Round July 1959-60

16th Round July 1960-June-1961.

17th Round Sept. 1961-July 1962.

TABLE VI
Distribution of Female Workers by Broad Industrial Categories 1911—1971 (In thousands)

Year	Total	Total No.	Cat.I	Cat.II	Cat.III	Cat.IV	Cat.V	Cat.VI	Cat.VII	Cat.VIII	Cat.IX	Total	Total of
	F. Pop.	of F.	Culti-	Agricul-	mining,	house-	manufa-	cons-	trade &	transport	other	of	cat. III to
	Workers	vaters	labour-	tural	quarrying	hold	cturing	truction.	commerce	storage	service	Cat	IX (Ag.
			ers		livestock	indus-	other		and communi-	cation		I & II	Sex) on
					forestry	try.	than					(ag. sec)	(Agr. Sec.)
					fishing.		household						
					hunting,		industry.						
					plantations.								
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1911	123,898	41,802	18,090	12,808	1,452		4,391	294	2,266	79	2,422	30,898 (73.9)	10,904 (26.1)
1921	122,749	60,085	20,276	10,003	1,431		3,689	289	2,189	67	2,151	30,279 (75.5)	9,816 (24.5)
1931	136,075	37,600	12,180	14,997	1,575		3,281	291	1,914	49	3,313	27,177 (72.3)	10,423 (27.7)
1951*	173,549	40,539	18,368	12,694	1,357		2,906	291	1,153	123	3,647	31,062 (76.8)	9,377 (23.2)
1961	212,467	59,402	33,103	14,171	1,187	4,665	789	243	815	65	4,364	47,274 (79.6)	12,128 (20.4)
1971(P)	263,900	31,298	9,266	15,794	907	1,331	865	204	556	146	2,229	25,060 (80.1)	6,238 (19.9)

*Figures do not include Jammu & Kashmir.

Provisional. The figures are based on one per cent sampling.

Source: (1) Census of India 1961—Paper No. 1 of 1962—Final Population Totals.

(2) Pocket Book of Population—Statistics—Census Centenary 1972.

force and particularly of female unpaid family workers falls steadily from a peak during July-August to a low during May-June.

However, taking into account all these variations the one uniform trend that emerges is that the proportion of female unpaid workers is much higher than that of males and they form an important segment of the labour force. The distribution of unpaid family workers by age-groups given below, indicates that their proportion declines considerably in the case of males after the age of 24 but for females, who form a higher proportion in the age group 10—19, the decline is marginal.

TABLE VII

Percentage of Unpaid Family Workers in the Labour Force in Rural and Urban India by Sex and Age.

Age	Rural India @		Urban India £	
	Males	Females	Males	Females
1	2	3	4	5
10-14	47.5	55.5	34.5	52.5
15-19	36.0	49.7	22.0	41.5
20-24	26.0	45.5	13.5	31.7
25-29	17.0	42.5	8.4	26.1
30-34	10.7	40.3	4.3	22.1
35-39	6.3	38.6	2.5	18.8
40-44	3.7	37.0	1.6	16.4
45-49	2.5	35.6	1.1	15.4
50-54	2.2	34.5	1.2	15.0
55-59	2.4	33.6	1.5	15.1
60-64	2.7	33.0	2.1	15.3
65-69	3.3	32.6	3.5	15.5
70-74	4.2	32.4	5.5	16.0
75+	5.6	32.2	8.8	18.0

@ Based on the NSS data from the 16th and the 17th Rounds (1960-61 & 1961-62, respectively)

£ Based on the NSS data from the 14th and the 15th Rounds (1958-59 and 1959-60, respectively).

Source : Report of the Committee of Experts on Unemployment Estimates, 1970—p. 165.

5.38 Agriculture has received somewhat more attention from government agencies and experts engaged in socio-economic research. Consequently, relatively more information is available on the role and conditions of women workers in this field. The non-agricultural industries and services in the unorganised sector, however, have been neglected by most investigators, with the result that there is practically no reliable data on this field².

5.39 Census data poses several difficulties, since it does not classify workers by degree of organisation of their occupations. Secondly, its classification of workers by their primary activity misses the overlapping nature of agricultural with non-agricultural occupations. Even the National Sample Survey, with its short reference periods, cannot discover fully the variety of occupations that women engage in during the course of the year.

5.40 The seasonal and fluctuating nature of their different occupations, in our opinion, is one of the main causes of large scale, short distance and short-term migration of rural women, particularly agricultural labourers, who are compelled to seek work outside their village during the off-seasons³.

2. This has been pointed out—repeatedly by various expert bodies, e.g. the National Commission on Labour, the Expert Committee on Unemployment Estimates, and the Committee on Unemployment.

3. Vide Chapter II—paras 44-51.

Estimates of Unemployment and Under-employment

5.41 The interplay of various social and economic factors pose difficulties in estimating employment, unemployment and under-employment of women, particularly in rural areas. In spite of such difficulties, the Committee on Unemployment found women to be a greater victim of unemployment and underemployment. The number of unemployed women in rural areas was estimated to be 4.5 millions as against 3.2 million males in 1971. Thus women constitute nearly 60% of the rural unemployed and 56% of the total unemployed in the country. Table (VIII). It should be noted that this estimate of unemployed only takes into account persons recorded as 'seeking work'. In the case of women, this category does not truly portray the number of women who need employ-

TABLE VIII
Estimated number of unemployed persons 1971 Census

Area	Sex	Percentage of unemployed persons	Total population in (1971) (million)	Number of unemployed persons (million)
1	2	3	4	5
Rural	Males	1.42	225.2	3.2
	Females	2.10	213.6	4.5
	Total	—	438.8	7.7
Urban	Males	1.35	58.7	0.8
	Females	0.98	50.4	0.5
	Total	—	109.1	1.3
All India	Males	—	283.9	4.0
	Females	—	264.0	5.0
	Total	—	547.9	9.0

TABLE IX
Estimated number of under-employed persons in 1971 population (on the basis of percentage of under-employed persons derived from 19th round of NSS)

Males				Females		
Hours of work in a week	Percentage of under-employed workers among the employed labour force	Percentage of under-employed workers in population	Under-employed persons in 1971 population (millions)	Percentage of under-employed persons among female workers	Percentage of female under-employed workers in the population	Under-employed persons in 1971 population (million)
1	2	3	4	5	6	7
Rural						
1—7	0.65	0.34	0.77	1.49	0.36	0.77
8—14	3.15	1.63	3.67	6.18	1.52	3.25
Total 1—14			4.44			4.02
15—21	3.05	1.57	3.54	5.65	1.39	2.97
22—28	3.62	1.87	4.21	9.06	2.03	4.34
Total 1—28			12.19			11.33
Urban						
1—7	0.50	0.25	0.15	1.55	0.19	0.10
8—14	2.14	1.07	0.63	6.64	0.82	0.41
Total 1—14			0.78			0.51
15—21	1.52	0.76	0.45	5.12	0.64	0.32
22—28	2.05	1.02	0.60	11.27	1.40	0.71
Total 1—28			1.83			1.54

Source : Report of the Committee on Unemployment, pp. 156—158 Based on NSS and Census data.

ment but cannot get it⁴. Table IX indicates that the number of under-employed women in terms of the hours of work available to them during a week becomes higher than men in the category of 22 to 28 hours in both rural and urban areas. Their proportion is however less than men when the hours of employment are less.

5.42 Low labour utilisation and seasonal unemployment are a manifestation of rural poverty where individuals are forced to take on extremely low productivity jobs which do not always ensure minimum subsistence. The basic problems that affect women's roles and opportunities for employment in this sector, spring from their helpless dependence caused by lack of adequate employment opportunities, limited skills and illiteracy, restricted mobility and lack of autonomous status. The occupational status of a woman worker is linked to that of her husband or father particularly so in the rural areas.

5.43 The abject poverty of these workers is the result of their lack of control over adequate productive resources. The effect of possession of marginal land or landlessness, a persistent gap between income and consumption, lack of continuous employment and low social position is further enhanced by near perpetual indebtedness. The cumulative effect of all these factors is that the worker is deprived of all bargaining power and occupational and geographical mobility. The totality of this problem results in increasing pauperisation and abject poverty.

Estimates of Poverty

5.44 In recent years there have been various attempts to estimate the magnitude of the problem of poverty. These estimates, measured on the basis of consumption-expenditure, have attempted to calculate the number of persons below subsistence level. According to the Planning Commission, the proportion of people below the poverty line has slightly come down in the last two decades although the absolute number of people in this condition (over 220 million) is just as large as it was earlier⁵. While the computation of this figure is very similar in other estimates⁶, there is difference of opinion among scholars regarding the direction of change. While some of them agree with the Planning Commission regarding the declining proportion of persons below the poverty line⁷, at least one has argued that in rural areas the proportion has been increasing from 30% in 1960-61 to 54% in 1968-69. In absolute numbers, according to this estimate, the rural people below the poverty line rose from 135 million in 1960-61 to 230 million in 1968-69⁸. The differences in these estimates is caused by their use of different standards for determining the minimum consumption expenditure.

5.45 It is sometimes argued that such an increase in the number of the poor is not possible in view of the rise in per capita income. This argument ignores the impact of the price increase of consumption goods, particularly of foodgrains. There is some evidence that the consumer prices have risen more for the poor than for the rich⁹.

5.46 It is difficult to estimate the proportion and number of women affected by this increase in poverty as data regarding this is not available. But the higher level of unemployment and under-employment among women leads us to conclude that their proportion below the poverty line is likely to be higher than men. The physical evidence of increasing destitution among women in recent years has been reported to us from various quarters. Unfortunately, however, no reliable data is available for estimating the size of this group. The Department of Social Welfare has estimated that about one lakh of widows become destitute every year

4. "The estimates of unemployment are dependent on the assumption of a given state of technology and organisation"—Report of the Working Group on Financial and Fiscal Measures (appointed by the Expert Committee on Unemployment)—Chapter II reproduced in *Mainstream*, July 14, 1973.

5. Approach to the Fifth Five Year Plan.

6. The other estimates are of Dandekar & Rath—40% of the rural & 50% of the urban population—*Poverty in India* 1971; B.S. Minhas 50.6% of the population in 67-68 (210 million).

7. Ibid.

8. Bardhan, P.K. 'On the Incidence of Poverty in Rural India'—*Economic and Political Weekly*, Annual No. Feb. 1973. It should be noted that the definition of poverty line in Bardhan's estimate, like that of Dandekar & Rath, is only Rs. 15/- per capita consumption expenditure per month at 1960-61 prices, which is lower than the Planning Commission's norm of Rs. 20/-.

9. Mahalanobis first drew attention to unequal movement in cereal prices for different decile groups of population in rural India. This was later corroborated by the Committee on Distribution on Income and Levels of Living. Other experts have confirmed this finding in recent years.

in the age group 20—44. For the age group above 65, this number is estimated at 48.3 lakhs¹⁰. It is, however, difficult to understand the basis of these calculations.

5.47 While the interrelated problems of poverty, unemployment and underemployment affect the economy as a whole, we have dealt with them in the section on the unorganised sector mainly because the overwhelming mass of women workers, both by primary and secondary activity, are to be found in this sphere. Structural changes in our economy which may decrease the share of the unorganised sector, are at present very distant objectives. The special disabilities that characterise the rights and opportunities for women's economic participation are more predominant in the unorganised sector and will require special attention and remedial measures.

A. Agriculture

5.48 Agriculture remains the major economic activity for women. According to the census of 1971, 80.1% of women workers are found in agriculture. In rural areas they constitute 87% of the female work force. In urban areas their proportion is 17.5%. Any assessment of the role and problems of women in Indian agriculture has to take note of the nature and structure of the agricultural economy with its characteristic features of land relations, labour utilisation and the roles and functions of the credit system.

5.49 The system of land relations and labour utilisation are closely inter-twined, the latter being intimately related with the hierarchic structure of land ownership. "Social stratification in a village is linked with land and caste, which govern status, economic power and political influence as much as the level of living which is their consequence¹¹".

While census data classifies agricultural workers into only two categories, viz. cultivators and labourers, this classification does not, in fact, reflect the realities of the agricultural community. Cultivators include absentee land owners who do not cultivate their land themselves, or cultivate it with hired labour, lease holders, and tenants of different categories, including share croppers and marginal farmers who not only cultivate their own lands but also engage in labour on others' land¹². Labourers, on the other hand, include casual, daily wage labourers, 'attached' workers, whose wages are fixed by contract, and 'bonded' labour who have taken loans from land-owners and have contracted to pay off the loan by working for them. The first and the second category may include very small cultivators whose main source of earnings, due to their small and sub-marginal holdings, is wage employment¹³". The second category gets somewhat higher wages than the first and is assured of some income in the lean seasons. The National Commission on Labour describes them as 'permanent'. Their mobility, however, is restricted as they cannot leave their masters at will. Some of this group are also share croppers¹⁴. The third category, in the words of the National Commission on Labour, "can best be described in terms of debtbondage, fixed for a time or a life time, or hereditarily descending from father to son in some cases¹⁵".

5.50 In spite of regional variations, this pattern of stratification of agricultural workers is found in most parts of the country. It is difficult to clearly demarcate the categories, because of a process of movement from one to the other, through changes in income position, land values, rates of return and the degree of indebtedness. Some recent studies have indicated that two separate processes have contributed to resumption of land by owners after evicting tenants: (a) increase in productivity from better methods of cultivation, and consequent prospects of higher returns from land; and (b) Governmental efforts to confer ownership rights on tenants. "While a certain degree of upward mobility may be found among a very small minority, the general pattern of change is in a downward direction, through increasing

10. Social Welfare in the Fifth Five Year Plan, 1972, p.23.

11. National Commission on Labour—para 28.5.

12. This definition of cultivators was accepted by the census of 1961. It has, however, been restricted to those whose primary activity is cultivation in census of 1971.

13. National Commission on Labour, para 28.1.

14. H.D. 'Arithmetic of Rural Poverty'—*Economic and Political Weekly*—December 15, 1973, p.2208. This is based on two surveys of agricultural workers by the Government of West Bengal in 1972 and 73.

15. National Commission on Labour—para 28. 63.

16. Hanumantha Rao, C.H. 'Socio-Political Factors and Agricultural Policies'—*Economic and Political Weekly*, Special No. 1974, p. 1287; Bardhan, P.K. 'Some Aspects of Inequality', in Mitra, Bose, Desai and Sharma—*Population in India's Development*, 1974, p. 71.

pressure of growing families on small holdings and growing indebtedness which leads to loss of land¹⁷.

"Insufficient land base is at the root of all these problems of poverty, tenurial insecurity and under-employment. Land owned being the primary collateral in loans whether from private or institutional sources, these problems are usually coupled with the problem of gross inadequacy of credit for consumption as well as production needs of the rural poor. Exorbitant rates of interest and the deadweight of outstanding loans depress the returns obtained by poor peasants from cultivation and marketing, perpetuate varying degrees of essentially bonded labour and, in general, darken their horizon for future prospects¹⁸".

5.51 The impact of this process on women's participation in agriculture is visible from the sharp decline in women cultivators and the increase in the ranks of agricultural labourers over the last few decades.

TABLE X
Distribution of Women Workers in Agriculture 1951-71

Category	1951 No. of female workers	%age of total no. of female workers	1961 No. of female workers	%age of total no. of female workers	1971 No. of female workers	%age of total no. of female workers
1	2	3	4	5	6	7
1. Cultivators	18367875	45.42	33103198	55.73	9266471	29.61
2. Agricultural labourers	12693671	31.39	14170831	23.86	15794399	50.46
		76.81		89.59		80.07

Excluding the figures for 1961 as a deviation case, which may be attributed to the broader definition of cultivators adopted in that census, the decline of women cultivators from 183.6 lakhs in 1951 to 92.6 lakhs in 1971, i.e. by nearly 50%, can be attributed to increasing pauperisation leading to loss of land or inadequate growth of productive employment opportunities on family farms, leading to withdrawal of women from active cultivation.

5.52 The increase in the number of agricultural labourers from 12.6 millions in 1951 to 15.7 millions in 1971¹⁹, a shift from less than one-third to more than half of the total women work force, is the greatest indicator of increasing poverty and reduction in the level of employment and not of improving rights and opportunities for economic participation. The average opportunity for employment available to women agricultural labourers is indicated in the following table :—

TABLE XI
Extent of Employment of Male and Female Agricultural Workers Belonging to Agricultural Labour Households :— by paid man days in a year.

	Ag.	Emp. (Paid mandays)	Non-Ag.	Emp. (Paid mandays)
	Men	Women	Men	Women
1	2	3	4	5
First Ag. Labour Enquiry 1950-51	189	129	20	14
Second Ag. Labour Enquiry 1956-57.	194	131	28	10
Rural Labour Enquiry 1964-65.	217	149	25	11

17. Prasad, P.H. 'Reactionary Role of Usurer's Capital in Rural India', *Economic and Political Weekly*, Special No. 1974, pp. 1305-1308.

18. Bardhan, P. K.—op. cit. p.69.

19. The highest number of women agricultural labourers recorded in pre-partitioned India was in 1931—14.9 lakhs; the number recorded in 1971 is the highest for both the periods.

5.53 Some intensive studies of rural households in selected districts of the country conducted by the Labour Bureau, Simla in 1967-70 indicate variations in the degree of unemployment of men and women according to regions and age-groups. The percentage in the case of males and females are of the total population in each age-group, and not of the male and female population respectively. The level of female unemployment is considerably higher than males in the States of Andhra, Gujarat, Madhya Pradesh and Tamil Nadu. The increasing unemployment of women in the higher age-groups in West Bengal is specially noteworthy.

TABLE-XII
Percentage of unemployed males, females and total persons to the total population of selected rural labour household by broad age group :

State	District within which study was undertaken	Sex	Age-group			
			Below			All ages
			15	15-59	60 plus	
1.	2.	3.	4	5.	6.	7.
1. Andhra Pradesh	Mehboob-nagar	Males	1.05	1.60	2.50	1.42
		Females	2.02	8.58	5.02	5.70
		Persons	3.07	10.18	7.52	7.12
2. Bihar	Gaya	Males	0.48	6.90	4.90	3.97
		Females	0.52	2.29	1.96	1.50
		Persons	1.00	9.20	6.86	1.50
3. Gujarat	Surat	Males	0.61	3.98	1.06	2.21
		Females	1.95	6.83	2.12	4.25
		Persons	2.57	10.81	3.18	6.46
4. Himachal Pradesh	Chamba	Males	0.63	1.96	1.07	1.34
		Females	0.24	0.34	—	0.28
		Persons	0.87	2.30	1.07	1.62
5. Jammu & Kashmir	Anantnag	Males	0.80	11.77	2.22	6.52
		Females	1.04	7.66	0.20	4.40
		Persons	1.84	19.43	2.42	10.92
6. Madhya Pradesh	Rewa	Males	1.02	4.94	5.02	2.40
		Females	2.06	12.18	2.51	6.49
		Persons	3.08	17.12	7.53	7.89
7. Maharashtra	i. Ratnagiri	Males	1.00	7.66	1.31	3.83
		Females	—	10.03	0.66	4.88
		Persons	1.00	17.69	1.97	8.71
	ii. Wardha	Males	0.98	2.37	4.14	1.98
		Females	1.19	5.38	2.68	3.50
		Persons	2.17	7.75	6.82	5.43
8. Mysore	Hasan	Males	1.32	15.58	0.86	8.03
		Females	1.64	12.27	2.58	6.70
		Persons	2.96	27.85	3.44	14.73
9. Punjab	Gurdaspur	Males	—	0.38	—	0.19
		Females	—	—	—	—
		Persons	—	0.38	—	0.19
10. Rajasthan	Tank	Males	0.63	10.39	0.80	5.50
		Females	0.74	11.65	0.36	6.16
		Persons	1.37	22.4	1.16	11.66
11. Tamil Nadu	Dharmपुरi	Males	1.73	11.19	10.55	7.04
		Females	2.53	20.02	2.78	11.37
		Persons	4.26	31.21	13.33	18.41
12. Uttar Pradesh	Etawah	Males	0.99	5.68	5.48	3.55
		Females	—	0.38	—	0.19
		Persons	0.99	6.06	5.48	3.74
13. West Bengal	Bankura	Males	0.55	3.56	9.85	1.64
		Females	—	4.22	17.33	2.06
		Persons	0.55	7.78	27.18	3.70

Source : Unpublished data from the Intensive Type Studies of Rural labour Household. Report of the Committee on Unemployment pp. 142-43.

Wage Discrimination :

5.54 The most important reasons for the low rates of wages, particularly for women labour in agriculture are the unorganised nature of farm labour, the ease with which hired labour can be substituted by family labour, the seasonal nature of the demand for labour and the traditional classification of some jobs as the monopoly of women. As per the Minimum Wages Act, 1948 (2nd Schedule) minimum wages are to be fixed by State Governments for agricultural labour and the rates are to be reviewed periodically at intervals not exceeding five years. There are still some States which have not brought large areas of agricultural employment within the ambit of the Act. The machinery for the fixation and enforcement of minimum wages is not uniform. The National Commission on Labour had criticised the inadequate implementation of the Act. The reasons for this, in their view, lay in the poverty and illiteracy of agricultural labour, the casual nature of their employment and their ignorance of the law, all of which apply particularly to the women. According to the Census of 1971, 92.1% of the women workers in rural areas are illiterate. Because of these handicaps, agricultural labour as a whole and women in particular are not able to employ methods now common to industrial labour to improve their bargaining power. There are considerable disparities in wages between men and women depending upon the region, between crops and the bargaining power of labour.

5.55 In earlier times, the regional variations in wage rates were probably influenced by cultural variations in attitudes to women's work. In recent years, however, this situation has changed. As observed by the National Commission on Labour, "the fixation of statutory minimum wages by the Government has tended to narrow the gap between wages of men and women."²⁰ The Commission, however, noted the continuation of wage differentials between men and women, particularly in agriculture. "In the larger sectors where women are employed viz., agriculture and small industries, evidence shows that in fixing wage rates some State Governments have not been free from discrimination against women."²¹ Table XIII indicates the difference in maximum and minimum wages of men and women for the same agricultural operations in selected States :-

TABLE XIII
Agricultural Wages in Different States 1. Bihar State 1970—for 11 months

1 <i>Sowers</i>	2 <i>Maximum</i>	3 <i>Minimum</i>
Men	44.05	15.95
Women	29.50	12.50
Children	19.25	10.53
<i>Weeders</i>		
Men	41.30	16.12
Women	33.76	12.90
Children	21.00	10.25
<i>Reapers</i>		
Men	67.00	18.75
Women	38.95 (10 months)	13.50 (10 months)
Children	19.31 (9 months)	8.50 (9 months)
<i>2. Haryana 1971 (9 months)</i>		
<i>Sowers</i>	<i>Maximum</i>	<i>Minimum</i>
Men	72.20	47.00
Women	2.50 (1 month)	—
Children	—	—
<i>Weeders</i>		
Men	64.00	43.50
Women	39.60	24.50
Children	15.00 (6 months)	3.00 (1 month)

20. Para 27.15

21. Ibid-27.14

<i>Reapers</i>		
Men	74.80 (8 months)	30.50 (6 months)
Women	31.50 (6 months)	10.00 (3 months)
Children	16.50 (4 months)	8.50 (3 months)
3. Madhya Pradesh 1971		
<i>Sowers</i>	<i>Maximum</i>	<i>Minimum</i>
Men (11 months)	44.75	15.25
Women	31.25	9.25 (9 months)
Children	23.00 (10 months)	7.75 (9 months)
<i>Weeders</i>		
Men (12 months)	36.50	12.50
Women	30.50	10.50
Children	23.75	7.70
<i>Reapers</i>		
Men (10 months)	35.00	10.50 (9 months)
Women	31.25	9.25 (9 months)
Children	23.75	5.75 (9 months)
4. Punjab 1971 (12 months)		
<i>Sowers</i>	<i>Maximum</i>	<i>Minimum</i>
Men	95.00	63.75
Women	—	—
Children	—	—
<i>Weeders</i>		
Men	95.00	64.00
Women	37.50 (7 months)	—
Children	—	—
<i>Reapers</i>		
Men	78.25 (10 months)	44.00 (8 months)
Women	—	—
Children	—	—
5. Tamil Nadu 1971 (12 months)		
<i>Sowers</i>	<i>Maximum</i>	<i>Minimum</i>
Men	48.25	23.00
Women	30.00	12.96
Children	24.25	12.49
<i>Weeders</i>		
Men	42.00	12.00
Women	27.00	12.00
Children	24.25	10.07
<i>Reapers</i>		
Men	58.00	24.23
Women	44.80	14.82
Children	44.28	16.01
6. Uttar Pradesh (12 months) 1971		
<i>Sowers</i>	<i>Maximum</i>	<i>Minimum</i>
Men	66.56	11.27 (11 months)
Women	47.70	9.75 (10 months)
Children	17.50 (8 months)	5.50 (7 months)
<i>Weeders</i>		
Men	60.00	11.23
Women	42.80	10.16 (11 months)
Children	30.20	6.00 (9 months)
<i>Reapers</i>		
Men	52.60	8.87 (9 months)
Women	42.85 (11 months)	8.07 (9 months)
Children	29.20 (5 months)	7.50 (8 months)

Source : Directorate of Economics & Statistics, Ministry of Agriculture, Govt. of India.

5.56 Apart from the differentials in wages for the same jobs, discrimination against women is strengthened by having lower rates for the jobs traditionally done by women, viz. sewing, weeding, transplanting, winnowing, threshing and harvesting, as against ploughing—normally done by men only. The other factor that contributes to the low wages of women is the practice of identifying a workday as equivalent of 7–9 hours. Many women are unable to report for duty on time because of household responsibilities, and do not get the full rates. It was reported to us that $\frac{1}{2}$ an hour's delay could lead to a loss of half day's wage. This would explain the wide variations in maximum wages drawn by men and women.

5.57 In spite of inadequacy of Government enforcement machinery, there is no doubt that the Minimum Wages Act has provided an opportunity to reduce discrimination in wages. We are happy to note that some State Governments e.g., Bihar, have not maintained any differential in wages for some jobs in agriculture.²²

Disabilities and Exploitation

5.58 The disabilities of women workers in agriculture stem from their occupational immobility caused by a variety of economic and social factors. The absence of alternative opportunities for employment in the rural sector has been intensified by the decline of traditional handicrafts and cottage industries. The problem of under-employment of agricultural workers and the need to strengthen and revive village and cottage industries had formed a major feature of the economic teachings of Mahatma Gandhi and has continued to form a part of the plans for economic development since independence. The contribution of these traditional village industries to the employment needs of particularly the weaker sections of the rural population has been admitted by the Committee on Unemployment which recommended the maintenance of the present levels of employment in these industries. In spite of the policy of support from the government, however, the remnants of these industries have not been able to provide, to an adequate extent, the needed diversification of occupations to the weaker sections of the rural population. On the other hand, disappearance of many of these industries has led to a loss of skills as a result of which the majority of women workers in the agricultural sector today do not possess any skills other than the traditional agricultural ones. We have met many such women among the landless labourers in the villages. A group of Santal women in a village in Birbhum (West Bengal) informed us that while they could not obtain employment in agriculture, their lack of other skills had reduced them to complete destitution.

5.59 The only major alternative avenue of employment that has been offered to these women in the recent past has been through the programme of rural works. While these may meet employment needs for a short time, their impact is not continuous either in maintaining a steady level of employment or in generating new skills. Women are employed in these projects only as unskilled labourers at the lowest rate of wages.

5.60 The large majority of women agricultural workers prefer to remain in their villages seeking occasional employment available within short distance. This was repeated to us in different parts of the country and is also the finding of a number of studies on rural areas. Apart from the voluntary decision on the part of women to remain in the villages which spring from their family responsibilities and socio-psychological reluctance to move out of the familiar habitat, for many of them such a decision is involuntary because of the status of their husbands or sons as attached labour. The restriction of movement of these labourers extends to the women members of the family also, either directly or indirectly. We have been informed that in many areas the attachment covers the women of the family also who have to work along with their male members, both on the land as well as in the household of the person to whom they are attached.

5.61 The vulnerability of the woman becomes still greater when her husband has been reduced to the status of bonded labour. It was admitted by the National Commission on Labour that the system of bonded labour "grew out of acute indigence and helplessness of tribal and semi-tribal communities in the grip of a precarious subsistence economy. There was a combination of reasons for the depression of this section of the rural population:—uneconomic holdings, meagre income from forest produce, high incidence of rent, insecurity of tenure and so on. To these were added the social compulsion which constitute 'ostensible' and immediate causes of the system. These are the necessity of incurring expenditure over marriage, avoidable expenditure on birth and death and general economic depression."²³

22. Bihar notification No. VI/W3-1062/70 L & E-2036 (3) dated 29.9.70—Bihar Gazette 20.10.70.
23. Para 28.63

5.62 It has been brought to our notice that the system of bonded labour sometimes leads to various forms of exploitation of the women. Some recent studies on the hill regions of Uttar Pradesh have revealed a close relationship between incidence of bonded labour and trafficking in women from such families.²⁴

5.63 While we do not have substantial data to establish a quantified relationship between status in the social hierarchy and economic position in the agricultural system, there are many indicators to show that a large proportion of the most vulnerable section of women agricultural labourers, namely the overwhelming majority of landless and a sizable section of the marginal peasants, come from socially depressed communities. According to the Census of 1961, 42.9% of women workers from the Scheduled Castes were agricultural labourers. In the case of scheduled tribes this figure was 21.33%. Their representation in non-agricultural occupations was negligible. The number of scheduled caste women employed as agricultural labourers was over 9 lakhs in Andhra Pradesh, over 6 lakhs in Tamil Nadu and 7 lakhs in Uttar Pradesh.

5.64 The degree of poverty and the higher participation rate among women in these sections of the population gives the large land owning families an upper hand since attached agricultural labour generally comes from these sections and wage differentials discriminating not only between men and women but between the non-scheduled and scheduled workers in general is widely prevalent. The National Commission on Labour had expressed its concern at this state of affairs. "Our concern is all the greater, since those who suffer more, even among women as a group, are ignorant, unskilled and semi-skilled workers coming from communities which convention recognises as belonging to the lower social strata and for protecting whom Article 46 of the Constitution is presumably intended. In a way women belonging to these communities are intended to be doubly protected (a) because they are the 'weaker section'; and (b) because of the comparatively unfortunate communities to which they belong; and it is here that the protection is the least."²⁵

5.65 Before concluding our review of the agriculture sector we would like to draw attention to a problem that affects women's participation in agriculture with the introduction of modern methods of cultivation. In the tribal areas where the traditional pattern had ensured a high participation by women, the advance of development with modern methods of cultivation is resulting in a gradual displacement of women from their traditional position in the community. Even in the matrilineal community of the Garos (Meghalaya), the development of orchards and terraced cultivation has started the process of shrinking women's activities²⁶. A similar process is visible in areas where the community is changing from shifting to terraced cultivation. It is argued by workers of the Bharatiya Adimjati Sevak Sangh that this is due to the approach of government agricultural extension workers who teach new methods to the men only. It would appear that the Government agents, influenced by their own biases or experience limited to their home areas, are perhaps unconsciously precipitating changes in the participation pattern of these communities which will affect the economic position of the women in the long run.

5.66 Our review makes it clear that the main disabilities and source of exploitation of agricultural workers are rooted in their landlessness, lack of organisation, and inequality of status. The basic solution to these problems obviously lies in redistribution of land to reduce inequalities and concentration of excessive economic power in the hands of a few.

5.67 We would like to mention here our impression of an experiment in rehabilitation of some landless families. 85 harijan families, settled on redistributed land at Narasannapet (Rayalaseema, Andhra Pradesh) presented us with a scene not only of agricultural prosperity, but of happy, hopeful families. The women's expression, dress and above all the bright faces of the children, presented a sharp contrast to those of a group of women from landless families from the same background. The latter looked ragged, worn out and totally hopeless. The contrast remains one of the most vivid experiences during our tours. It also

24. Yugandar, B.N.—From the Green Hills of Puroila to the Brothels of Delhi and Meerut—Paper prepared after field study and survey conducted by the National Academy of Administration, Mussorie (unpublished) Trivedi, H.R.—'Exploitation of Scheduled Caste Women' (Uttarkashi region)—Study conducted by Ali India Harijan Sevak Sangh for the Committee on the Status of Women; Jain, Km. S.D.—Changing Status of Women in Jaunsar Bawar. Para 27.14

25. Banerjee, N—Role of Women in the Tribal Economy (unpublished). Paper submitted to Seminar on the same subject, organised by the Adimjati Sevak Sangh in 1974.

brought home the futility of attempts to scratch at the problem of rural poverty without the one measure that can help this destitute class—land reform.

5.68 Some legislation, dealing with distribution of land is not lacking. But its implementation varies from gross inadequacy²⁷ to ineffectiveness. What is more, in some of the new land ceiling laws, as for example in the laws proposed in States like Madhya Pradesh and Karnataka, undue discrimination has been shown against women. While a major son is entitled to a unit of land outside the family ceiling in his own right, no such provision has been made for a major daughter, married or unmarried.²⁸

5.69 In our opinion, no substantial improvement in the condition of women agricultural workers is possible without effective steps to redistribute land. Side by side with it, organisation of labour needs to be developed to improve the bargaining power of these workers, to prevent exploitation and low wages.

B.—Non-Agricultural Occupations:

5.70 Next to agriculture the largest number of women are employed in various industries, trades and services in the unorganised sector both in rural and urban areas. The statistics relating to women workers in these unorganised and regulated industries and services are highly inadequate and unreliable. At present there is no agency responsible for the collection of employment statistics in the unorganised sector. The National Commission on Labour, confessing its difficulties in identifying unorganised labour by any exact definition, took recourse to describing some of their characteristics and constraints, namely (a) casual nature of employment; (b) ignorance and illiteracy; (c) small size of establishments with low capital investment per person employed; (d) scattered nature of establishments; and (e) superior strength of the employers operating singly and in combination. Admitting the inadequacy of information in the absence of any first hand study of different categories of this amorphous group, the Commission estimated the number of their workers to be about 10 millions. It also stated that there was another group of approximately 11 millions who could not be described as 'employees' in the cottage and household industries and handicrafts. These estimates were based on the census of 1961.

5.71 The Committee on Unemployment estimated that traditional village and cottage industries are "currently providing employment to more than 10 million persons among the relatively vulnerable sections of the community widely dispersed over rural and semi-urban areas." These include handloom, khadi and village industries, sericulture, coir, cashew, manufacture of bidis, handicrafts, etc. They suffer from a number of handicaps, including inadequacy of institutional credit, poor techniques and consequent low productivity.

5.72 It has to be remembered that one of the greatest factors contributing towards the fall in women's economic participation in India has been the decline of this group of industries as a consequence of unequal competition with the factory sector. The most developed of these household industries before independence were hand-weaving, oil pressing, rice-pounding, pottery, tanning and leather manufacture, tobacco processing, etc. Almost each of these industries had to face competition from factory production. With the establishment of oil extracting enterprises in the mid fifties, the oil mills offered higher prices for the raw-materials and thus made it impossible for the household oil-pressing industry to compete with them. In tanning, the demand for chrome tanned leather went up along with the increase in factory production of modern types of shoes. The village producers were not in a position to cater to these new demands and the industry started declining fast. The same is true of rice-pounding, which could not survive in competition with the rice mills. Metal utensils replaced earthen-ware and even traditional brass and bell-metal utensils declined through the rise of the aluminium industry. Tobacco retained its position to a certain extent because of the continuing demand for bidis. Hand-weaving retained much of its position but even here the introduction of power looms and the monopoly of yard manufacture by the mills

27. The Planning Commission working Group Report on Agriculture, 1974 reported that out of 100 million acres declared as surplus under land ceiling laws, only 1 million acres had been distributed. Also Central Reforms Committee (1971).

28. The Madhya Pradesh Ceiling on Agricultural Holdings (Amendment Ordinance 1974. Sec. 8(2) "Where a holder who is a member of a family has one or more major sons, each son shall subject to ceiling area specified...be entitled to hold land separately from out of the land belonging to the family" There is a similar provision in the Land Reforms Act 1974 of the Karnataka State and the Punjab Ceiling Act 1972.

sector worsened the situation. This was partly off-set by the mills' growing emphasis on production of fine and super-fine cotton and synthetic textiles.

5.73 Though this trend of decline has been visible for a considerable period, data regarding women's participation in household industry is available only from the Census of 1961 and 71, which suffers from certain difficulties in comparability. Even after taking this into account, the decline in the number of women engaged in household industry from 4.6 million to 1.3 million during this decade presents a grim picture.

5.74 Apart from household industry, small-scale industries which are not in the organised sector, also provide some employment to women regarding which no reliable data is available. The industries in this group which generally employ a large number of women are leather tanning, bidi, rice and dal mills, coffee curing, cashew nut processing, coir, match, fire works, manufacture of Aggarbattis and paper products etc.

5.75 According to the Draft Fifth Five Year Plan, these industries which present a broad spectrum of varying levels of technology, scales of production and forms of organisation have an important role to play in the removal of poverty and the reduction in inequalities of wealth and development.²⁹

5.76 The great difficulty in identifying different categories of this amorphous group is the variety in their pattern of organisation. Some of them, e.g. the bidi or the match industry, have some units in the organised sector, because the establishments are sufficiently large to come under the purview of the labour laws. Others evade this by various methods, e.g. by splitting up their establishments into small units, by recruiting their labour on a casual basis, by farming out work to be done by women at home, or by farming out to contractors. The net result of all these methods is that they escape scrutiny, for both enforcement of labour welfare and minimum wages, and collection of information on employment and workers.

5.77 While the Census of 1961 and 1971 give us some estimate of women in household industries, we regret to find that no clear estimate is available regarding the actual number of women engaged in the vast unorganised non-agricultural sector. Even the special studies conducted by the National Commission on Labour did not collect any specific information regarding the number or percentage of women workers in these industries and services. No doubt the recommendations of the Expert Committee on Unemployment Estimates, regarding more detailed collection of data on women workers,³⁰ if implemented, would provide more reliable data on this category of workers. In the absence of such information, we can only attempt a rough estimate of the number of women actually engaged in this sector.

5.78 Out of 31 million women returned as workers by the Census of 1971, if we exclude the 25 million in agriculture and the 2 million employed in the organised sector, the remaining 4 million, we may conclude, are employed in non-agricultural occupation in the unorganised sector.

5.79 The main problems faced by all employees in the various industries in this group are insecurity of employment, lack of standard minimum wages, excessive hours of work and absence of welfare amenities, most of which stem from their lack of organisation. Particularly for women who work at home, in various industries these problems become still more acute, since they are more vulnerable to various forms of exploitation.

5.80 The Minimum Wages Act, 1948 attempted statutory regulation of wages and some control of working conditions of labour in these occupations. Minimum wages are formulated for certain scheduled employments in these industries from time to time. Though the Factories and Industrial Disputes Acts apply to many of these establishments, the National Commission on Labour's Survey of such industries revealed that the enforcement of labour laws in this sector is highly inadequate and working conditions are far from satisfactory. The plight of the workers in these industries and occupations was noted in the Third Five Year Plan and the intention to formulate a separate code laying down minimum service and working conditions, with an official machinery to enforce the code, was announced at the meeting of Labour Ministers in 1962, which endorsed the Plan Statement. Some attempts have undoubtedly been made by the Government to regulate conditions in this sector since then, e.g. the Contract Labour (Regulations and Abolition) Act 1970, the Bidi

29. Draft Fifth Five Year Plan—Chapter-VI—page 160

30. Vide para 5.41

and Cigarette (Conditions of Employment) Act, 1966 and the various State Acts to regulate conditions of employment in shops and commercial establishments.

5.81 The success of all such attempts, however, depends on the existence of strong labour organisations to compel the implementation of these statutory provisions. Unfortunately, the lack of such organisations in this sector results in labour not having the necessary bargaining power.

5.82 In the specific industries and trades which employ a large number of women, workers are characterised by their massive illiteracy, hopeless dependence on intermediaries to obtain employment for them and ignorance of agencies or laws from which they could seek protection. Organisation is doubly difficult when the workers are scattered, which is frequently the case with women who do the work in their homes, or in small work places. Another difficulty in organising them is the short duration of most such employment, and the high rate of turnover of most workers. The grinding level of poverty, and the debts which they frequently have to incur from these employers, just to meet the minimum consumption requirements of their families, also act as deterrents to any form of labour organisation. Under these conditions, the chances of any labour organisation seem very distant, unless the initiative is taken by some Committed and enlightened persons.

5.83 In the absence of any systematic and comprehensive study of the conditions of women in this complex group of occupations, we can only indicate our findings as illustrative of the situation. A fuller investigation of the workers in these occupations including the special problems that affect the women, the self-employed and the wage paid, is an imperative necessity and calls for attention by Government, social research agencies and welfare organisations.

Wage Employment:

5.84 One of the most significant group of wage labourers in this sector are those employed by contractors. The practice of employing contract labour is prevalent in varying degrees in both the public and private sectors. The Labour Bureau has been studying the prevalence of contract labour in 19 industries during the last few years and has found that in iron and manganese mines the percentage of such labour was 73.9% and 65.8% respectively while in cotton ginning, rice mills, lime stone quarries, petroleum refineries, ports and iron and steel works, their percentage ranged from 25% to 48%. According to the National Commission on Labour, the employment of contract labour is most pronounced in the mining and construction industry. The construction undertaken by the public works departments of the Government in 1957, employed 60% of their labour on contracts.³¹

5.85 Under the Factories, Mines and Plantation Labour Acts, contract-labour employed within the premises of establishments covered by these Acts are entitled to the benefits of working conditions, hours of work and weekly rest admissible to the labour directly employed, but they are not entitled to any leave with pay. The Contract Labour (Regulation and Abolition) Act 1970³² seeks to make the principal employer responsible for the provision of essential amenities and payment of wages. The contractor will have to obtain a permit and deposit a security with the authorities and will have to pay wages at the same rate as those paid by the principal employer. In case of default the principal employer is authorised to make payments and recover the cost from the contractor. The provision of certain basic welfare amenities like drinking water, rest rooms, canteens and first-aid are obligatory under the Act. Health insurance benefits are available to contract labour under the Employees State Insurance Scheme in establishments covered by it, but very few establishments extend this benefit to contract labour. The evasion is either by not employing them directly or employing them for short periods at a time. The Central Government is responsible for the enforcement of this Act in any industry or establishment carried on by or under the authority of the Central Government, any establishment of Railways, cantonment Boards, major ports, mines, oil fields and banking and insurance companies. The implementation of the Act has

31. Para 29.9. The definition of contract labour given by the NCL emphasizes three aspects—(a) such labour is not borne on the pay rolls of the employing agency—(b) they are not paid directly and (c) the employing agency does not own any direct responsibility in regard to their working conditions. Sometimes they stipulate wage rates and working conditions but do not concern themselves regarding their enforcement.

32. Applicable to every establishment in which 20 or more workers are or were employed in the preceding 12 months and where the work is not of an intermittent or casual nature. It applies to all contractors employing 20 or more workers.

been delayed because by 1973, 250 writ petitions had been filed in High Courts and 10 in the Supreme Court.³³

5.86 Construction Industry:—As an illustration of women contract labourers we discuss their position in the construction industry. The number of women in this industry has declined from 2.9 lakhs in 1951 to 2.04 lakhs in 1971. The Government is the largest employer as public constructions—dams, bridges, roads and public buildings, make up the major share of expenditure in this industry. The Committee initiated two studies on women construction workers, one in Patna³⁴ (covering 3 major projects), and the other in Delhi³⁵ (covering 9 construction sites). The findings of these studies illustrate the conditions of women in this industry.³⁶

5.87 Nature of work and methods of recruitment and wage-payment:—Women are employed mostly as unskilled labourers for carrying earth, mortar or bricks, crushing bricks and working hand-pumps. Recruitment is mostly done either directly by the contractor or the sub-contractor (Jamadar). Wage payment is on daily or weekly basis. The Bihar study reported that the sub-contractors obtain a contract for the job on piece rate basis but pay their workers on daily basis, ensuring a higher margin of profit for themselves. Workers complain of short payment and unexplained deduction. The system of deferred wage payment and unjustified fines and deductions are reported in both the studies. The Bihar study reported that in the case of tribal women part of their wages are kept back to be paid at the time of termination of employment. The Delhi group reported that apart from fines, the Jamadar deducted 25-50 paise per day from their wages without giving any reasons. The existence of these intermediaries invariably depresses the wage rates. Women from all the three Bihar projects reported wage differentials between men and women. In Delhi such distinction has been abolished since 1961.

5.88 Levels of Living:—The household incomes of nearly 80% of the respondents in Delhi is between Rs.200 and Rs.300. The per capita monthly income is below Rs.75 for 45% and below Rs.50 for a little over 20%. For the Bihar group, the average household income ranges from 194.4 to Rs.334.45. Per capita monthly income ranges from Rs.38.88 to Rs.66.6. For all the families covered by these two studies, the earnings of the women constitute the major share of the families' income. The expenditure pattern reported by both the studies indicate that the major part of the income is spent on food and other essential items of daily need. 37% of the Delhi group and 37.7% of the Bihar group (58.7% among non-tribals and 10.3% among tribals) are in debt. The most important reasons for taking loans are sickness, to meet gaps in normal consumption and marriage expenses. These debts generally remain unpaid.³⁷

5.89 Socio-Demographic Characteristics:—These women are mostly drawn from the rural poor (77.6% of the Bihar group and 86% of the Delhi group). The Delhi group consists of migrant labour from Rajasthan and out of 150 respondents 144 belong to the scheduled castes. 90% of the Bihar group belong to the scheduled castes and scheduled tribes from the Chhotanagpur region. Almost all the respondents reported poverty as their main reason for taking up construction work. One interesting feature reported in the Delhi study is that in 40% cases the decision was taken by the women while in 60% cases they were persuaded by their husbands and relatives. 78% of the Bihar and 80.76% of the Delhi group were young women below 35 as the nature of construction work makes heavy demands on physical strength. 40% of the Delhi respondents became employed before reaching their 15th year, and 40% had

33. As reported by the Ministry of Labour.

34. Conducted by the Department of Labour and Social Welfare, Patna University, under the supervision of Professor G.P. Sinha.

35. Conducted by the Delhi School of Social work, under the supervision of Professor S.N. Ranade.

36. The Committee had also received assurances from the State Governments of Kerala and Tamil Nadu of similar reports on women construction workers in major government Projects. No report was received from Tamil Nadu. The Government of Kerala sent a brief report which indicates that the majority of women on construction projects in Kerala come from nearby localities, including villages of Madurai and Coimbatore. Their age ranges from 16 to 60. They are engaged in unskilled work including stone crushing. "Wage rates differ from place to place according to the bargaining capacity of the workers. Generally no difference exists in wages between men and women for work of equal nature." No housing facilities are provided. Sanitary and medical facilities are provided in some projects. "As far as possible the officers of the labour department look after the welfare of these workers. No separate agency is engaged for providing welfare need of this group."

37. We have received some evidence that these construction workers become and remain bonded to the contractors or sub-contractors through non-payment of debts, and have to report for duty whenever called. For some of them it means detachment from their normal agricultural occupations.

already worked for more than 7 years. At least 1/5th of them had held more than 4 jobs. Of the Bihar group, 81% had begun their working life as wage labourers very early in their childhood. Of the rest, 12.7% became wage labourers between the ages of 15-20. The age composition of the women shows that of the Bihar group 8.7% are below 15, 47.3% between 15-25, 28% are between 25-35 and 22% are over 35. Of the Delhi group 40% are between 15-25, 40.6% are between 25-35 and 19.3% are over 35.

5.90 98% of all these women are illiterate. Of the Delhi group more than 90% were married before the age of 15 and in 3/4th cases the marriage was consummated by their 15th year. As many as 43.33% were married before the age of 10. Of the Bihar group 12.9% were married before the age of 10, 37.6% were married between 10-15 and 31.8% between 15-20. The majority of this last group are tribal women since the average age of marriages of the tribal group is 18.4 while that of the non-tribal women is 11.4. 11.3% of the Bihar group are widows or deserted wives.

5.91 23.37% of the Delhi group had continued working till the last day during pregnancy and 40.14% till the 8th or 9th month. This indicates that the provisions of the Contract Labour Act guaranteeing maternity leave have not been applied in the case of these women. Absence of the minimum health protection during pregnancy as well as continuous mal-nutrition has resulted in high infant mortality. 645 children had been born to these women but at the time of the survey only 389 of them were alive. For the Bihar group, out of 233 children born to these women 67 are dead, 29 of these died before reaching the age of 1 year. A comparison of the tribal and non-tribal groups showed that the average number of births and deaths was nearly double amongst the non-tribal women than amongst the tribals. The Bihar study also reveals that the majority of the women continue to work even when they are ill rather than go without food for themselves and their dependents. Of the Delhi group, 30 who had suffered from some illness lasting more than 1 week, had received treatment in government dispensaries and hospitals and 22 had been compelled to discontinue work for periods ranging from 4 days to 6 months. They did not receive any wages during such absence. The other 8 continued to work during illness.

5.92 *Working Conditions and Access to Welfare:*—Under the rules of the Central Public Works Department contractors are bound to provide fair wages and welfare services like creches, housing of specific standard and sanitary services. Working hours, weekly day of rest, overtime rates, wage periods and rates of payment and the name of the inspecting officer are to be notified by the Department. The inspecting officer is responsible for enforcement of these rules and has to investigate cases of complaint or disputes under the Industrial Dispute and Workmen's Compensation Act. The Bihar Government has also made regulations for controlling the terms and conditions of employment of the labour force employed by the contractors. "But it appears that most of these regulations are more honoured in the breach than in compliance. Though the survey did not attempt to find out the reasons for the non-implementation of these regulations it is not difficult to form the observation that no serious attempt was made by the Government authorities to see that these regulations were enforced"³⁸. The Bihar study which covered only government projects reports that the period of actual work has found invariably exceeding the scheduled 48 hours week. On particular days the period exceeded the maximum of 9 hours by 4 or 5 hours. None of the women received pay for the weekly holidays. Though overtime is common, payment for such work was "rare, primarily because of the ignorance of the workers and the absence of the law enforcing agency". No arrangement had been made for creches in any of the 3 sites though 43 of the respondents were carrying small children with them to work. "In the case of the Ganga Bridge Project it was a clear violation of Rule 11 of the Welfare Rules." Arrangements for living accommodation had been made by the employer for 58% of the respondents. For 10.6%, materials for 'kuchcha' hutments had been provided by the employer. At the northern site of the Ganga Bridge Project, however, temporary living accommodation with ancillary facilities (without lighting) had been provided to all the respondents.

5.93 The Delhi study reports that "though in most cases women earned as much as their husbands they did not enjoy equality of status within the family. Only about 8% of women said that they had a say in taking decisions in respect of matters like daily expenditure, education and marriage of children and selection of jobs. The rest of the respondents stated that the decisions were taken by the husband or by the parents-in-law."³⁹

38. Bihar Study op. cit.

39. Delhi Study op. cit.

5.94 *Bidi Industry* :—A large group of women in the unorganised sector are engaged in feeding the production of larger factories from their homes. Employers in bidi, matches, mica industries prefer to pay women less as workers feeding their unorganised and unregulated factories. The largest of these is the bidi industry and consists of factories, small workshops as well as home production. Wages are on piece rate basis. Working hours and bonus payments are unregulated. Women working at home are called 'Ghar Khatas'. This is a peculiar feature of the bidi industry and is prevalent over many parts of the country.

5.95 According to the Census of 1961, out of 9 lakhs bidi workers 5.5 lakhs belong to the household sector. The bidi and cigar industry, where employment of women exceeds men, (77.3% in Andhra Pradesh, 60.9% in Maharashtra, 47.5% in Rajasthan) is the worst of the sweated industries. A recent report on bidi workers in Sinar (Maharashtra)⁴⁰ observes that out of 10,000 bidi workers, 65% are women who generally work in their homes and are paid at the rate of Rs. 4/- per thousand bidis. The total labour time required for rolling thousand bidis ranges from 12 to 16 hours.

5.96 The Committee appointed by the Government of Andhra Pradesh in 1969 for revision of minimum wages in the tobacco manufacturing industry reported that the seasonal industry of tobacco leaf handling employs nearly a lakh of workers. The factories work from February to July for a period of 60 to 180 days. The majority of workers are women. The same is true of the bidi industry. The revised wages recommended by the Committee are :

	Categories of workers	Revised wage recommended
1. Tobacco leaf	Men (General including packers)	Rs. 4.05 per day
	Women workers (General, grading, stemming and scrap cleaning)	Rs. 115.30 per month
		Rs. 3.60 per day Rs. 93.60 per month
2. Cigarette manufacture	Men	Rs. 5.05 per day Rs. 131.30 per month
	Women	Rs. 4.60 per day Rs. 119.60 per month
3. Zarda Manufacture	Men	Rs. 4.10 per day Rs. 106.60 per month
	Women	Rs. 3.00 per day Rs. 78.00 per month

The Committee felt that the amount of work done by women workers cannot be regarded as of equal value and quantity hence higher rates were recommended for the men.

5.97 A small workshop in the house of a contractor visited by us in Kurnool (Andhra Pradesh) in 1973 was, however, paying at the rate of Rs. 2.50 per thousand bidis. The workers complained of frequent deductions in wages on various pretexts that the products did not come up to the required standard of quality. The workers consisted of families of men and women and small girls between the age of 5 and 15. The adults were engaged in rolling and tying the bidis while the children were mainly engaged in folding the tops of the bidi. One 12 years old girl mentioned that she had been doing this for as long as she could remember. All the workers looked undernourished. The children particularly were extremely small for their age. A few pregnant women said they had to work till the last day of their pregnancy. Working hours were from 6 A. M. to 6 P.M. During these hours a family of 4 managed to produce about 1 thousand bidis. The employer reported that young boys became restive and were therefore not found useful. The girls, however, were prepared to put in the necessary labour for 12 hours a day.

5.98 As an illustration of home production we found that in Madhya Pradesh the general practice is of distributing raw materials early in the morning to the women working in their homes, the finished products are collected in the evening. The bundles of leaves are handed over without any counting or checking of quality. The finished products are, however, carefully checked and counted, and deductions are made from wages, even for bad leaves

40. Economic and Political Weekly, June 15, 1974.

which had been supplied but could not be used. There were also complaints that the bundles of leaves often do not contain the specified quantity for rolling the required number of bidis. The charge for such shortages has, however, to be borne by the worker. We found the same practice in Tamil Nadu and were informed that this is widely prevalent in other parts of the country.

5.99 The Bidi and Cigarette (Conditions of Employment) Act, 1966, which was upheld by the Supreme Court in January 1974, prescribes a working day of 9 hours and 48 hours a week.

5.100 The Bidi and Cigarette (Conditions of Employment) Act 1966, provides for a working period of 9 hours and 48 hours a week. The workers are entitled to a paid weekly holiday and leave at the rate of 1 day for every 20 days work during the preceding year, wages for the leave period at rates equal to overall daily wages during the month immediately preceding the leave and 3 months maternity leave for women workers. This Act which was challenged by some firms has been upheld by the Supreme Court in January 1974. Describing the 3 categories of bidi workers, namely those employed as direct labourers, home workers "mostly women who manufacture bidis in their homes with the assistance of other members of their family, including children" and out-workers, to whom material is supplied by the proprietor himself without the agency of the middleman, Chief Justice A. N. Ray observed :—

"Under these systems the contractor engages labourers less than the statutory number to escape the application of the Factory Act.... Sometimes, there is no definite relationship of master and servant between the actual worker and the ultimate proprietor. The proprietor will not be answerable for the wages of the out-workers because there is no privity of contract between them. A large body of actual workers are illiterate women who could with impunity be exploited by the proprietors and contractors... Women and infirm persons can earn something by rolling beedis. The dependence of these people particularly the women shows that they have little bargaining power against powerful proprietors and contractors."⁴¹

The Court also held that the provisions of the Act including maternity benefits, one month's wages in lieu of notice, etc., also applied to the home workers.⁴²

5.101 Our investigation of women in this industry confirm that the degree of exploitation has been due to their lack of bargaining power. We feel that the Supreme Court's decision regarding the applicability of the provisions of this Act including maternity benefits need to be enforced urgently but in order to do this effectively it is necessary to set up a special machinery.

5.102 *Match Industry* :—The pattern of organisation in this industry is exactly similar to the Bidi industry. We visited a factory at Sivakasi (Tamil Nadu) which presented a picture similar to that described above. We found children as young as five years and women working at home, while men work in the factory. There are no trade unions, and no protection is available to these workers.

5.103 *Chikan Industry* :—This traditional industry, which had languished in the period before independence, revived as a result of efforts made by the Government of Uttar Pradesh after independence. It is a fine art of embroidery done on a wide variety of products such as kurtas, shirts, table linens, handkerchiefs, saris etc.⁴³ The annual value of output of chikan goods in 1972 was estimated at about 75 lakhs which was five times that of 1959. According to official sources the number of craftsmen had also increased five fold, from about 5,000 to about 25,000 in 1972.⁴⁴ According to the U.P. Handicrafts Board, however, the number of workers engaged in this craft today is about 45,000 and the annual value of their output is around Rs. 1 crore. In the years since independence the taste for chikan embroidery has revived and goods like saris, kurtas, table linens are exported to Delhi, Bombay, Calcutta as well as abroad. Chikan work is now also done on new varieties of materials like silk, voile, nylon etc. In spite of this expansion, however, the lot of the workers has not

41. M. G. Beedi Works vs. Union of India—AIR 1974 SC 1832, p. 1835.

42. Justice Alagiriswami, however, held that the Maternity Benefits Act could not apply to home workers—ibid page 1856.

43. This Section is based on a study undertaken by the Giri Institute of Economic Development and Industrial Relations, Lucknow covering 500 families and the Committee's own findings.

44. Dist. Gazetteer 59 and Directorate of Industries, Kanpur, 1972.

improved but has in fact become worse. Out of the estimated 45,000 workers engaged in this industry, 31,000 to 35,000 live and work within the precincts of Lucknow Municipal Corporation. 97% of them are women. The 3% men are largely engaged in processes incidental to the embroidery, such as cutting, printing, sewing, washing, folding etc. As in the case of bidi workers, the chikan workers also fall into 4 categories. 95.8% are contract workers, 3.6% belong to a mixed category of self-employed-cum-contract workers and only 0.5% direct employees. Only 0.1% can be described as fully self-employed. The contract workers work on piece-rate while the wage employees are either on time rate or on piece-rate. 70% are multi-process workers while the rest specialise in particular processes of chikan embroidery.

5.104 Since the workers are pre-dominantly Muslim women who observe purdah they have no direct links with the consumers. Work is obtained through intermediaries. 65.5% of the women covered by the study got work through contractors, 19.5% from wholesale traders, 1.17% through government agencies and only 0.27% obtained it directly from the consumers. 16.5% receive work through more than one agency. The study found that 46% of the contract workers and wage employees, 33% of the self-employed-cum-contract workers and 60% of the self-employed are suffering from under-employment. Only 7% of the workers receive full day's work, 7% get work for less than 4 hours a day. 55.58% of the contract workers, 62% of the self-employed-cum-contract workers and 80% of the self-employed workers reported that there had been no change in the availability of work. The rest complained of decrease in the availability of work.

5.105 *Levels of Living* :—Majority of the workers live below the poverty line. 74% of the contract workers, 62.16% of the self-employed-cum-contract workers and all the wage employees earn less than Rs. 40 per head per month. The table below indicates the range of per capita income of these families :—

TABLE XIV :
Classification of Workers' Families by Per Capita Monthly Income

Per capita income group	Categories of Workers				TOTAL
	CW	SECW	WE	SE	
Less than Rs. 40	728 (73.84)	23 (62.16)	5 (100.0)	—	756 (73.47)
Rs. 40—60	150 (15.21)	6 (16.21)	—	1 (100.0)	157 (15.26)
Rs. 60—80	55 (5.58)	4 (10.81)	—	—	59 (5.73)
Rs. 80—100	24 (2.43)	3 (8.11)	—	—	27 (2.62)
More than 100	29 (2.94)	1 (2.71)	—	—	30 (2.92)
Total	986 (100.0)	37 (100.0)	5 (100.0)	1 (100.0)	1029 (100.0)

(Figures in brackets denote percentage).

The earnings are lowest for the wage employees and the highest for the self-employed. The average monthly earnings of the contract workers is less than Rs. 27, that of the wage employees less than Rs. 15, and that of the self-employed Rs. 200. The self-employed-cum-contract workers earned on an average around Rs. 60 per month. All the categories of workers, except the self-employed, reported decline in their incomes. The average contract worker could earn Rs. 34 in 1969 as against Rs. 26 in 1973. Both wage employees and self-employed-cum-contract workers experienced a decline of 30% in their incomes over the period. While it is generally estimated that these women only supplement the family income by this work, a large number of them whom the Committee met in Lucknow were widowed or deserted women who were supporting their families by their own earnings. A very large number of them have to wear glasses by the time they reach the age of 30 because of the strain that this work puts on their eyes. Many of them become incapable to continue with this work by the time they reach the age of 50, because of failing eyesight.

5.106 *Production and Marketing* :—Since production and marketing are mostly in the hands of intermediaries who are traditional money lenders, this results in a high degree of exploita-

tion. The study found that with a view to keeping their production costs down, wholesalers tap sources of cheap labour from rural areas. The reduced emphasis on quality work depresses the wage rates. The wholesalers' margin of profit ranges between 60% and 73%. The differentials between the rates paid to the workers by the wholesalers and government agencies ranges from 20—30%. Deductions are made from wages on various pretexts e. g. delay in completing work, bad craftsman-ship, damage to material etc. This was reported by 64% of the contract workers, 78% of the self-employed-cum-contract workers and all the wage employees. In all, 38% complained of deduction in wages and 38% reported disputes due to low wage rates. The group of women whom the Committee met also complained of similar treatment even from co-operatives and sometimes from voluntary organisations formed for marketing these products. In some cases the workers never received payment for goods lost by these agencies.

5.107 The U. P. State Industries Department organised certain chikan centres in 1947 to provide regular employment and fair wages and to widen the market for these products. Skilled workers were enlisted and were given technical supervision and guidance. In 1964, however, this programme was abandoned since the Government felt that the aim of reviving and diversifying the craft had been accomplished. The U. P. Handicrafts Export Corporation set up in 1971 deals directly with the intermediaries and not with the craftsmen :—

“In the specific context of work organisation pattern of the craft which is characterised by the hold of indigenous moneylenders, wholesalers and multiple tiers of middlemen over the workmen, it should be obvious as to who could have been at the back of such an argument.”⁴⁵

5.108 Majority of the women fully realise their helplessness at the hands of the middle-men. They would like to become self-employed, but find it difficult because of their lack of capital, education and the inaccessibility of the market. A large majority wanted reopening of the chikan centres by the Government. 73% wanted the Government to help in the supply of raw materials, 45% wanted financial assistance and credit through the banks and 73% wanted the Government to make marketing arrangements. Nearly 16% wanted fixation of minimum wages. They were sceptical about co-operatives.

5.109 It should be noted that crafts like chikan, Kamdani and zardosi were originally practised mainly by men. This pattern still continues in zardosi work. As wages and income from chikan work declined, this work has now become practically the monopoly of women. A similar process has developed in the Kamdani industry also, where the condition of women workers is very similar to that of the chikan workers.

5.110 *Tailoring and Ready-made garments* :—This is a new industry, and little factual information is available regarding the details of employment. The tailoring profession in India has always been practised by men, and still remains so. In the initial stages of welfare activities among women, in the pre independence period, it was believed that knowledge of tailoring would make women better housewives. For the same reason, home science training in schools also emphasised this training. It was rarely practised by women for earning purposes. In recent years, however, welfare agencies and all women's polytechnics have been emphasising this as the most important avenue for self-employment. Government, and other welfare agencies present sewing machines to army widows, destitute women and women rescued from prostitution as the most respectable method for rehabilitating them. Craft training centres run by Government or voluntary agencies all over the country organised tailoring classes for women.

5.111 There is no doubt that many women are now engaged in the manufacture of ready-made garments. They are generally sold by welfare organisations or a few sympathetically disposed retail shops. The income is low and insecure. As an avenue of self-employment, tailoring has proved very difficult for women, because of their inability to command sure markets, and adequate capital for investment. We were informed in several places that the sewing machines gifted by the Government had often been sold, because the women were unable to use them as a means of earning a livelihood.

5.112 With the growing importance of the ready-made garments industry in recent years, however, some women are able to obtain wage-employment in this field. The reports that we have received point to low wages and exploitation of workers. In the metropolitan cities

45. The study by the Giri Institute.

like Delhi and Bombay a few women from upper middle class families are now entering this field as private entrepreneurs.

5.113 A study conducted by the Textile Labour Association, Ahmedabad, covering a thousand women who were occupied in sewing in their homes and were paid on a piece-rate basis, yields some information. About 65% of the respondents were daughters or wives of industrial workers. Most of them (60%) were young women, below 25, and 13% were even below 15. Majority of them were school-dropouts (76%) mainly due to economic reasons. Employment Exchanges are of no help to such women in getting employment, 57% of them had to rely on their own efforts to procure work. Mostly they get work from contractors or shop-keepers dealing with ready-made garments. Untrained women usually stitch ready-made garments after cutting is done by a professional man. Lack of skill and ignorance about availability of work results in exploitation of the highest degree. Wage rates are generally very low and very widely. The majority (86%) were earning below Rs. 50/- per month.

5.114 *Sweepers and Scavengers* :—While Government and municipalities are the most regular employers of sweeper women, many industries employ women under contract system and they are employed in large numbers in private capacity as domestic workers. The local bodies maintain waiting lists of sweepers who work as substitute workers in temporary capacity as road sweepers, drain and latrine cleaners. The study group of the National Commission on Labour noted that there is a growing trend among municipal bodies to discourage the recruitment of women in view of the liabilities involved in their employment in the shape of maternity benefits and other conditions of work.⁴⁶ They are governed by the Minimum Wages Act. There is no uniformity in the wages of employees in different local bodies and complaints about irregular payment of wages, deductions and irregularity in disbursement of salaries also exist on a large scale. The hours of work also vary from one local body to another.

5.115 A study of women sweepers⁴⁷ in seven small towns in Punjab indicates that they are severely exploited by most of the local bodies. They are mostly given part-time jobs, without weekly rest, maternity leave or paid holidays, uniforms or house rent allowance. On an average they get a monthly wage of Rs. 80/-. While women sweepers constitute a substantial proportion of municipal workers, their wages and working conditions vary from one municipality to another. The study suggests enactment of a suitable legislation to regulate the conditions of work to bring them on par with men part-time sweepers. They suffer from social disabilities and their problems are further aggravated by poverty and illiteracy.

5.116 A study undertaken by the 1961 Census in two towns of Northern India found that scavengers and sweepers in private households were mainly women, since men from the families of the traditional sweeper castes have begun to take up jobs as labourers or as employees in the tertiary sector, specially in the urban areas. The study noted that male members of the families who have taken to other occupations continue to allow their women to work as scavengers.

5.117 Groups of women sweepers whom we met in Madhya Pradesh and Rajasthan also complained that local bodies discriminated against women by using them mostly as substitute, temporary or contract workers. Among the whole group of thirty in Madhya Pradesh, only four had become permanent.

A special problem that affects these women is that with the gradual introduction of modern sanitation in urban areas the demand for their services is on the decline. In our opinion, the plight of these women require close investigation and alternative avenues of employment. This is particularly important because being scheduled caste and illiterate their chances of finding such employment on their own are severely limited.

5.118 *Domestic Servants* :—Domestic service, for cooking, cleaning, sweeping, washing and looking after children is a major avenue for wage employment of women, particularly in the urban areas. Considering the large numbers in this occupation, it is unfortunate that no effort has so far been made to collect data on their numbers, wages and conditions of work. They are not protected by any law or regulations and even the modicum of protection that the Minimum Wages Act provides, is not applicable to this group. Though wages for such

46. N. C. L. Para 29.53 & 29.54

47. Dang, Satyapal, "Plight of Women Sweepers" *Mainstream*, V. C. L. 12, No. 50 — August 1974 pp. 20-24

service have increased to a certain extent in recent years, particularly in large cities, they are still very low, considering the sharp rise in cost of living. Service is insecure and the possibilities of exploitation is high. Full-time workers may sometimes be provided with accommodation and food, though the accommodation is generally inadequate. The pattern, however, is not uniform. There are also no limits on their hours of work. Part-time workers generally get no accommodation or food, and their employment is subject to much greater insecurity. Their basic needs are hardly met by their meagre income. In order to bridge their consumption gap, it is common for these women to work for several families. In total their working hours often exceed 12 hours a day.

5.119 We met groups of these women in Calcutta, living in the slums. Most of them were sole-supporting mothers, who could carry on their work in several houses only with the help of young daughters. The latter have to start this work from the time they are 8-9 years old. Younger children are left by themselves near the homes. In one slum we found that the children were left tied to a tree. Babies in arms are often carried to work. Older boys are sent to school, though lack of supervision does not always guarantee their attendance. Malnutrition is high in such families, and both adults and the children are exposed to all the evils of slum-living, lack of proper sanitation, pollution and congestion. One teenager we met was working in several houses to support an unemployed father, a sick mother and three younger children. The normal income from one household ranges from Rs. 20/- to Rs. 40/- per month, depending on the nature of the work. The fortunate few who can obtain and maintain work in four or five households, may earn an average of Rs. 150 to Rs. 200 by working over 12 hours a day.

5.120 One odd feature of this group in Calcutta is that many of them are wives of share croppers whose husbands stay behind in the village. The normal pattern in other parts of the country, is for the family to remain in the village, while the man seeks work outside.

5.121 A comprehensive investigation of this group of workers is an imperative necessity, with provision of at least the basic services for the protection and welfare of their children.

5.122 *Women in Petty Trades* :—Petty trades like food and food products, home crafts, paper bags, agarbattis, making packets of incense or tobacco are all low productive occupations, returns from which are generally far below the level of subsistence. Economic pressures are pushing rural women workers and women in urban slums to seek ways to earn a livelihood. A large group of widows in Varanasi whom we met were all engaged in such trades. Their earnings averaged between Rs. 15 and Rs. 20 per month. In Karnataka, we found earning 50 paise for 1,000 agarbattis, when they work on the premises of the employer. When such work was taken home, the earnings were 40 paise per thousand. Employers justified this difference by blaming the workers for pilfering the material. Since the material is weighed on both the occasions, namely before and after production, this argument can only be described as an excuse for exploitation.

“Among these women in petty trades, crafts and personal services, the worst cases of poverty and malnutrition were to be found. A large proportion of the persons occupied in low productivity occupations were women, many of whom were the sole supporters of their families and lived in urban slums. Nearly all such women were illiterate and without any vocational training. As modern industries in most developing countries recruited mainly male workers, these women were forced to support themselves and their families on work of such low productivity that malnutrition and high child mortality became a characteristic of such families.”⁴⁸

5.123 *Casual Workers/Daily Wage Earners* :—Daily wage earners are found in all types of unskilled jobs in both organised and unorganised sectors with varying degrees of protection, depending on the type of industry and nature of the task. In mines, plantations, construction, stone quarries and seasonal industries employment of such labour is a common feature. While the casual workers directly employed by the larger establishments, do come under the purview of some labour enactments like wages and hours of work, the daily wage earners in unorganised industries do not get the benefit of even minimum wages and enjoy exceedingly little protection.

5.124 The casual workers are employed to fill vacancies of permanent workers and during occasional pressure of work. It is significant that the majority of women employed in mines are casual workers engaged in wagon loading or earth-removing operations whose employment is neither continuous nor regular. They are pressed into service to complete loading work within a stipulated period. The control and supervision exercised by the management is nominal. In the jute industry a large number of women work as 'budlis', or substitute workers. Such labour is continually employed to circumvent the provision of laws which confer certain benefits on permanent workers, or to deliberately restrict the scope for regular employment by causing artificial breaks in their service.⁴⁹ They are deprived of the maternity benefits because the Maternity Benefits Act stipulates employment for a continuous period (160 days for factories and mines and 150 days for plantations) for eligibility. They earned 150 days leave with wages and sickness benefits. The Factories Act limits such benefits only to workers who have completed 240 days of service, and the Mines Act to those who complete one calendar year of service. The National Commission on Labour noted that all such stipulations are an invitation to an employer to arbitrarily terminate the workers' service before they complete the prescribed period to deprive them of these benefits.

5.125 Very little is known about nomadic and daily wage labourers, load carriers carrying raw material to the markets and factories or those working in village industries. A significantly large number of such labourers are living below the poverty line. They are mostly concentrated in rural and backward areas and urban slums.

5.126 In the industrial city of Ahmedabad there are about 1000 women hand-cart pullers. A survey of these women in⁵⁰ 1973 revealed that 70% of them were in the age group of 20 to 40 years. Majority of them live in huts (71%) or in pakka cholis (14%), 12% of them were found to be living on foot paths and only 3% of them had rooms provided by the Housing Board. 93% of these women were illiterate. One woman had completed high school, which is exceptional. It is a family vocation as in 73% cases men were also cart pullers. In 16% cases, the husbands were engaged in small trades. Majority of the families are rural migrants from Rajasthan, Gujarat and Maharashtra. 88% of the women work from 9 A.M. to 7 P.M. and 12% have no fixed time. 85% take their children along with them. Their average daily income is below Rs. 3 for 49%, between Rs. 4 and Rs. 8 for 40%, and Rs. 9 and above for 11%. Meagre income and large scale indebtedness are common. 40% of the women were casual labourers relying for work entirely upon the 'mukaddam', who claims a regular daily tax between Rs. 2 to Rs. 3.50.

Self-Employment :

5.127 In the period before the rise of modern markets and commercialisation of the economy, most traditional occupations open to women generally on the basis of their castes, could be described as self-employment. Spinning, weaving, fish curing, basket making, midwifery, barbering etc. can be mentioned as illustrations. Commercialisation, the rise of intermediate producers, who could organise both production and marketing on a large scale with the aid of capital, and the introduction of wage labour, gradually eliminated many of these avenues for employment of women. The recent increase in unemployment has led to a realisation of the need to promote self-employment in all areas,⁵¹ and various programmes have been undertaken by the Government to promote self-employment, through training and credit assistance. Before discussing the possibilities for promoting more self-employment among women, we examine some of the existing occupations in which they find some opportunities.

5.128 *Weaving* :— According to the Census of 1961 the handloom/powerloom industry provided employment to about 1.4 million workers. It forms an important section of house-hold industries and handicrafts. The National Commission on Labour found a large proportion of workers in this industry to be family workers. The cooperative form of organisation which extends to areas of small enterprises is a more recent development. A third of the total number of handlooms is found in Andhra Pradesh and Tamil Nadu. This mainly rural industry does not require much capital and the technology has remained mostly

49. NCL para 29.25

50. The Economic Status of Hand-cart Pullers (women) in Ahmedabad. A paper presented to the Seminar on Unprotected and Unorganised Labour - M. S. University of Baroda. 28-4-73.

51. "In the context of the dimension that the problem of unemployment has assumed in the country and of the stupendous task involved in generating employment to match the requirements it becomes imperative to create conditions favourable for the growth of self-employment...." Report of the Committee on Unemployment - para 8.75

at the simple stage. The introduction of power-looms in some areas, has however precipitated a lot of changes in the status and income of producers,⁵² making a few wealthy and capable of setting themselves up as entrepreneurs, reducing others to the level of wage labour.

5.129 In the less developed regions, particularly the north-eastern hill areas, weaving still remains the monopoly of women. Traditionally this was only for home consumption, and not for commercial purposes. Such weaving is still done, even by educated and urbanised women in Nagaland, Manipur and some parts of Assam. Some attempt for commercial production has developed in recent years, and where this is definitely linked to a system of marketing, the women develop considerable economic independence.

5.130 An excellent example of this is Manipur, where women's right to market their own products has been institutionalised for a considerable period. The women's market in Imphal, where the sellers are all women, selling various items of dress, furnishing and food products, produced by themselves and others, is only a larger replica of similar markets in the interior of Manipur. Ownership of a stall in the market is a prestigious occupation and till very recently, former Ranis of the State used to join other women in selling their goods in the women's market. The stalls are passed on from generation to generation, from mother-in-law to the daughter-in-law. In the absence of the latter, or her reluctance to accept the responsibility, it is offered to a niece-in-law on the husband's side, but not to the daughter. Some of the stall-keepers acquire the place by paying rent to the actual owners, who are fairly well-to-do. The tradition is so strong that an attempt by the Municipality to evict them provoked an organised protest from the women. The Municipality was compelled to abandon the idea. While the Imphal women, because of better market prospects both in the city and outside the State, earn more, rural women are at a disadvantage.

5.131 We were informed that some women who could market their own products could earn an average income of about Rs. 400/- per month from weaving. When they worked for others, however, this came down to between Rs. 50 and Rs. 80. Women complained of the rising prices of yarn, and demanded that the State Government should take over the yarn-trade, to prevent black-marketing. The Government's efforts to market these handloom products outside the State has stimulated this industry, but the emergence of unscrupulous intermediaries between the producers, who are all women, and markets outside the State may affect the women's share of profits in the long run.

5.132 The opposite of the Manipur situation exists in the silk-weaving industry in Banaras, another traditional occupation. There the women only reel the silk and silver yarn, but cannot touch the looms, which are operated by men only. Training in the craft for men and women begins from childhood. Though self-employed, these families are fully dependent on the intermediaries (Mahajans) who buy their products, sometimes provide the initial capital to buy the yarn and often provide loans to meet the gap in minimum consumption. The women have no control nor a separate share of earnings, since the marketing is done by the men. A similar practice prevails in the silk-weaving industry in Kanjeevaram (Tamil Nadu) and Karnataka.

5.133 The women weavers of Assam, because they cannot market their products directly, suffer from the exploitation of intermediaries on whom they have to depend for both supply of raw materials and marketing.

5.134 *Retail Trade* :—One of the traditional avenues of income for women was the retail trade, selling family products both agricultural and non-agricultural in daily or weekly markets. They continue to do so, and the woman vendor selling vegetables, fish giam, spices, utensils etc. is a common sight in village markets as well as in urban areas throughout the country. In big cities, it is a common practice for women to hawk vegetables and fruit in residential areas. Many of them started with their own market gardens, but have now become dependent on buying the products from the wholesale market with a narrow margin of profits for themselves. The increasing distance of the markets from the place of production, and the need for big investment in acquiring and transporting large quantities of products inevitably leads to the exclusion of the women from their original role in the retail trade. In the coastal areas of Orissa, Goa and Tamil Nadu, the fish brought in by the men used to be sold by women. Now only a handful of them are seen actually retailing the family's

52. The Power loom Enquiry Committee described it with "symbol of vast countrywide process of economic transition and techno-social change."

catch. The main catch is captured by contractors or Government fisheries agents and transported to the bigger markets.

5.135 Most retailing done by women in urban areas is now for a very narrow margin, between wholesale and retail prices. For women living close to the cities however, this is still an accepted avenue of income. Cities like Calcutta and Bombay receive a daily influx of hundreds of women vendors from nearby villages, selling a variety of food products.

5.136 *Food Processing* :—During the last decades, welfare workers and organisations, concerned by the economic hardship of women have made considerable efforts to develop self-employment in production of pickles, papads, and various other food products. These organisations, and some individuals are found in most towns, trying to market these products by informal methods, like house to house visit or through exhibitions and fairs. The main difficulty experienced by these women is in ensuring steady and profitable sale of their products. Their lack of capital prevents production on a scale sufficient to reduce costs, and their inability to market the products adequately makes returns from this occupation both meagre and uncertain.

5.137 We met several groups of women in Kerala, Bihar and other States who had started bottling pickles, jams and making variety of papads, dalmot, packets of ground spice, etc. Most of them regretted that their ventures generally face difficulties through shortage of capital and inability to market their products. We heard of several efforts which had collapsed from these difficulties. Even in urban areas these ventures face difficulties in marketing their products and are generally reduced to dependence on occasional sales and exhibitions and a limited regular clientele among friends and associates of the organisers. In villages the marketing difficulty becomes almost insurmountable.

5.138 A few of these ventures, when backed by a well-knit organisation have proved fairly successful in ensuring a modest income for the women. Amongst these we may mention the Jyoti Sangh in Ahmedabad, which we visited, the Bhagini Mandals in some towns in Maharashtra, and the All-Bengal Women's Union in Calcutta. The latter's success in sale of cooked food has enabled it to open a restaurant, for direct marketing of their products.

5.139 *Problems of self-employment* :—The approach to the Fifth Plan envisages expansion of self-employment in village and small industries, retail trade and services. The Committee's investigation has revealed that the most important constraints on women entrepreneurs are (a) non-availability of capital which is enhanced by the reluctance of credit institutions to advance loans for their ventures;⁵³ and (b) inadequate marketing arrangements.

5.140 Without the knowledge of modern marketing methods, forward linkages with potential markets in urban areas and resources as well as techniques for sales promotion, women's efforts at self-employment or entrepreneurship are bound to languish unless they are taken in hand by some organisations with credit resources as well as techniques to organise production and marketing. A successful example of this kind is the organisation of self-employed women who are being assisted by Ahmedabad Mazdoor Mahajan. The Committee on Unemployment has suggested that the Small Industries Corporations in different States should play an active role in the display and marketing of goods of small scale units. The other suggestions are setting up of trade centres and retail outlets at important places by organisations of small entrepreneurs.

5.141 According to the Ministry of Industrial Development, assistance in the way of credit and accommodation facilities have been given to some women entrepreneurs. Their number so far is negligible. In Delhi, the number of such self-employed women is as follows :—

Industry	Number of women
Electronics	2
Chemicals	11
Garment making	15

5.142 Illiteracy and lack of training opportunities in different aspects of production and marketing is the biggest handicap in the way of women assuming a larger role in this field.

53. Officials of the Andhra State Industries Department informed the Committee that banks were refusing to advance loans to women entrepreneurs even when their projects had received Government sanction.

In traditional occupations like basket-making, weaving or wood work it has become increasingly difficult for individual producers to market their goods. We had, at an earlier stage,⁵⁴ suggested to the Government the development of training-cum-production centres in small scale-cottage type industries in both rural and urban areas for the production of processed food, ready-made garments, soap and candles, home utensils, educational equipments, toys, leather goods and other products. Such centres need to be developed on the basis of a rational programme of assistance related to the resource and market potential of the environment.

5.143 We had particularly stressed that such centres should not be designed with an urban middle class bias but should generate employment among women of low income groups in both urban and rural areas, who have suffered most because of the emergence and growth of organised industry and modern complex marketing. In our view, any programme for generating self-employment among women has to be based on an integrated net-work of training, production and marketing. The organisation of such a net-work would require a large number of educated women at all levels with information and knowledge of the changing pattern of demand for particular products and market mechanism. This calls for special attention from all agencies concerned with employment generation. Unless special attention is given to the particular problems of women, their existing handicaps, which get enhanced by the prejudices of assisting agencies will keep them out of the beneficial effects of existing programmes for generation of self-employment.

5.144 The Ministry of Industrial Development, in response to our suggestions had observed that no women candidates had been sponsored by the Small Industries Development Organisations for training in better techniques of production. While suggesting areas for training and employment opportunities for women, both the Ministry of Industrial Development and the Ministry of Labour displayed an urban bias since their list consisted of occupations like tailoring, embroidery, shorthand and typing, doll-making, pottery and novelty sales. These occupations, in our opinion, can provide opportunities for self-employment to a very small minority, only in the metropolitan cities and will not meet the employment needs of the large mass of women both in small towns and in rural areas.

5.145 It may be noted that the Report of the Inter-Regional Meeting of Experts on the Integration of Women in Development of the United Nations has also emphasised "the need to train women in all aspects of carrying on trade and small scale industry with particular reference to management, marketing, etc.". The Report also highlighted the problem of lack of access to credit and loan facilities suffered by most women in developing countries.

III—Women in the Organised Sector :

5.146 The organised sector in the Indian economy comprises of :—(a) all public sector establishments, i. e. all services under the Central, State and Local Governments and occupations in Public undertakings in the field of industry, credit financing, public utilities etc. and (b) non-agricultural private-sector establishments which employ 10 or more persons. This definition is important for two reasons. The Directorate General of Employment and Training, Ministry of Labour, collects detailed data regarding employment from all establishments in the organised sector, and hence data regarding this sector is much more detailed than the unorganised sector. Secondly, this sector is governed by certain laws and regulations relating to industries, services and other occupations. These provide a framework of requirements, procedures and conditions which ensure a degree of legal protection to workers in these establishments.

5.147 While the size of the organised sector has been growing steadily over the last few decades, the proportion of women employed in this sector formed only 6% of the total women workers in the country in 1971, 2.7% being in industry and 3.3% in the tertiary sector. The changing trends in women's participation in this sector is indicated in Table—XV. In terms of absolute numbers, women's employment in this sector has increased from 1.37 millions in 1962 to 2.14 millions in 1973, i. e. and increase of 56.2%. The increase in the total employment during the same period was by 49.6%. While the increase in the number of women has been generally somewhat faster than the total increase (with occasional

54. Suggestions made for the Fifth Five year Plan, in June 1973.

Note : This definition of the organised sector has been adopted by the Directorate General of Employment & Training, Ministry of Labour, Government of India.

fluctuations in the growth rate) their proportion in the total employment has remained practically constant at 11% during this decade.

TABLE—XV Employment of Women in Organised Sector

Period		Total (figures in lakhs)	Women	% of columns
(1)		(2)	(3)	(3) to (2)
March	1962	125.8 (+4.0)	13.7	10.8
"	1963	134.1 (+6.5)	14.9 (+8.7)	11.1
"	1964	142.3 (+6.1)	15.2 (+2.0)	10.6
"	1965	150.0 (+5.4)	16.8 (+10.5)	11.2
"	1966	154.6 (+3.1)	17.4 (+3.5)	11.2
"	1969	166.3 (+7.5)	18.5 (+0.9)	11.1
"	1970	170.4 (+2.4)	18.9 (+2.2)	11.1
"	1971	174.9 (+2.6)	19.2 (+1.5)	10.9
"	1972	179.8 (+2.2)	20.2 (+5.2)	11.2
"	1973	188.2 (+4.6)	21.4 (+5.6)	11.3

Note : Figures in parentheses indicate growth rate.

* Source : D. G. E. & T.

5.148 It should be noted that while services under Government had been governed by detailed regulations for a long time, the regulation of employment in the private sector began relatively later. Prior to independence, employment in the Government of public sector consisted mainly in the services and the number of women in these was negligible. The Constitution of independent India, however, guaranteed equality of opportunity and non-discrimination on grounds of sex. This changed the situation radically and enabled women to seek employment in the public sector.

5.149 The impact of this has influenced the role and opportunities for participation of women in the organised sector considerably. The proportion of women workers in public and private employment has been changing over the years as the Table below will indicate :—

TABLE—XVI Distribution of Women Employees in Public and Private Sectors
(Figures in lakhs)

Year	Total	Public	Private
1962	13.7	4.8 (35%)	8.9 (65%)
1963	14.9	5.5 (37%)	9.4 (63%)
1964	15.2	5.8 (38.2%)	9.4 (61.8%)
1965	16.8	6.4 (38.1%)	10.4 (61.9%)
1966	17.4	7.2 (41.4%)	10.3 (58.6%)
1967	18.2	7.2 (39.6%)	11.00 (60.4%)
1968	18.3	7.5 (40.7%)	10.8 (59.3%)
1969	18.4	7.7 (41.8%)	10.7 (58.2%)
1970	18.9	8.1 (42.8%)	10.8 (57.2%)
1971	19.3	8.6 (44.6%)	10.7 (55.4%)
1972	20.3	9.2 (45.3%)	11.1 (54.7%)
1973	21.4	10.1 (47.2%)	11.3 (52.8%)

Source : D. G. E. & T.

Note : Figures in parentheses indicate percentage of the total employees.

5.150 While the number of women employed in the public sector increased by 110.4% between 1962 and 1973, the increase in the private sector has been only 26.9%. The proportion of women in the public sector has thus gone up from 35% to 47.2% of the total number of women employed in the organised sector. The share of the private sector has, however, gone down from 65% to 52.8% of the total. This indicates the growing importance of the public sector in the employment of women. The relatively slower increase of women's employment in the private sector, is however, a cause of some concern, and merits closer examination.

5.151 Table XVII indicates that the State Governments and local bodies provide bulk of the employment of women in the public sector. Next in importance are quasi-government organisations. This group consists of public undertakings in the sphere of industry, finance and public utilities, and various specialised agencies established by Government for development and research. It should be noted that the emergence of this group in the public sector is mostly a post-independence development. Considering that, the substantial number of women employed in these bodies, and the rapid increase in their numbers during recent years is a significant trend. A substantial share of these bodies is in industry, where the general trend in women's employment, which we discuss later, is rather adverse. The position in the Central Government also does not appear to be very satisfactory.

TABLE XVII

Women Employees in the Organised Sector etc. 1971 to 1973 covered by the Employment Market Information Programme of the D.G.E. & T.

Branch of the public sector	No. of women employees at the end of March			Percentage change		
	1971	1972*	1973*	1971/70	1972/71	1973/72
Central Government	81.6	78.5	84.7	7.1	4.0	7.9
State Government	352.1	376.8	422.8	7.2	5.3	12.2
Quasi-Government	84.4	104.4	135.7	12.9	23.5	30.1
Local Bodies	344.2	358.8	362.0	2.9	3.9	1.1
Total public sector	862.3	917.9	1005.2	5.9	5.6	9.5
Private sector	1067.5	1105.3	1129.7	-1.3	3.5	2.2
GRAND TOTAL	1929.8	2023.2	2134.9	1.8	4.4	5.5

* Including Jammu and Kashmir covers all establishments in the public sector and non-agriculture establishments in the private sector, employing 10 to 24 workers. Percentage change 1972/1971 has been worked out after excluding Jammu & Kashmir figures from 1972.

Source : D. G. E. & T.

5.152 While ratio of women to men employees in the public sector has shown a steady increase, it still remains below 10 per hundred men. In the private sector, where the ratio was much higher in the previous period, it has registered a decline during the years 1967-71. There is a slight improvement since 1972, but the ratio still remains below the '62 position. While total employment in private sector has been fluctuating during this period, the women's share has declined or remained constant. In the public sector, the steady increase in total employment is reflected in the employment of women, though the ratio has not improved appreciably. The overall share of women's employment in this sector, in relation to men, presents poor picture.

5.153 For purposes of detailed analysis we have divided the organised sector into two parts according to the differences in the nature of the regulations and occupational requirements :

- (a) Industry; and
- (b) Services and Professions.

A. Industry

5.154 The first four Five Year Plans as well as the Industrial Policy Resolution (1956) of the Government of India emphasised the need to accelerate the rate of economic growth by speeding up industrialisation. "Employment was not considered an objective in itself : it