Chapter I

Constitutional Debates on Property Rights

In India, the position of women is in many ways paradoxical. The personal laws governing various aspects of the lives of four primary communities are based on religious prescriptions. In reality, the four codes of the four communities—Hindus, Muslims, Christians, and Parsis—are a convenient combination of scriptural sanctions, heterogeneous customs, practices, and most important, precepts forwarded and established through the political maneuverings of the powerful spokespersons of these communities. A contour of power relationships can be mapped in these laws. Largely, the points of reference and intersection are caste, region, class, and gender. The personal laws are important as they define the relationship between men and women within the family, control and direct marriage, divorce, maintenance, guardianship of children, adoption, succession, and inheritance. All of them concern women intimately and treat women as non-productive, subordinate, and dependent on male kin. There is a clear reflection of religious patriarchies in these laws. Contemporary inheritance/property laws owe its emergence to complex processes of negotiation and interaction between multiple actors—the pre-colonial and colonial systems of laws and the different segments of population, the varying ideologies and interests, and the conflicting pulls of scriptural rules and local customs.

The history of personal laws, particularly, the Hindu law forms the background of the research. The need to incorporate the constitutional debates on property rights is to build the continuum between the different chapters in this thesis. The discussion on how the Hindu Code Bill shapes property law and social policy is an important aspect of understanding the way customary practices perpetuate gender hierarchies in dispensing landed property to women. Gender-specific normative assumptions that were articulated in the Hindu Code Bill debates in the Legislature, find a place not only in the post-independence development discourse but also at the community and household regulatory mechanisms in West Bengal and Bihar. Such arguments find resonance in the gendered ideologies about dominant conceptions of the family, in the way the judiciary mediates property rights to women. This chapter gives us a framework to understand the
complexities of the politics involved in negotiating property rights of women in the legislature and legal reform (Chapter I), in the system of succession laws (Chapter II), social policy through land legislation and land reforms (Chapter III) and the actual practices that inform inheritance systems that favour women's disinheritance (Chapter IV) and its relationship with the question of empowerment of women (Chapter V).

The British intervention in the 18th century to codify Hindu law was an attempt of the colonial power to bring under their judicial control the aspects of the social and political life of the diverse communities of the natives. The first important historical landmark in this process of codification was Warren Hastings' serious attempt to create a digest of Hindu laws in the form of 'A Code of Gentoo Laws' or Ordinances of the Pundits. It broadly looked into issues of inheritance, civil procedure, partnership, gift, debt, rent and hire, violence, adultery, duties of women, deposits and others. The second significant addition was the code prepared by William Jones' with the help of pandits. His translation of Manu Smriti has influenced the discourse on oriental studies in the West. Finally, the Colebrook’s translations of the Mitakshara and Dayabhaga were considered as the reliable and authentic source in court judgments. The systematic way in which the British altered native customs for their own political convenience ultimately resulted in the creation of a myth that shastric injunctions governed Hindu community. Ironically, the British homogenized personal laws through codification and further codified custom through the accumulation of case law. It hardly incorporated the diversity of belief, sect and practices prevalent in different regions and classes. Such reforms had no commitment towards substantive diversity. In the first decades in post Independent India, the touchstone of government’s policy was its commitment to principles of equality, non-discrimination and gender equality. To achieve this goal the infant democracy took upon itself the task of reforming the Hindu laws.

This study entails an analysis of the relevant aspects of Mitakshara and Dayabhaga systems of law which governed the rights of Hindu women in pre-colonial period and also exploration of the legislative history of Hindu Law Reform proposals, particularly the Hindu Code Bill to identify the gains made in women’s legal rights at the initiative of the state. Though contemporary Indian law has not been able to disassociate itself from its colonial origins, the nationhood project has tried to incorporate the interests
Chapter I

of various groups. However, the contradictory approach to gender equality became most prominent in the Hindu Code Bill which was projected to be in consonance with the spirit of the new Constitution. The main component of the Hindu Code Bill was that sacrosanct personal laws could now be transformed in the name of “modernizing” the nation.

Unfortunately, a latent conspiracy of silence on the issue of gender discrimination was apparent in the debates on the Hindu Code Bill. The anomalies and anti-women bias within the Hindu Code were not discussed widely in public forum. They remained camouflaged in statute books and legal manuals. This facilitated the construction of a fiction that the Hindu Code marked modernization and hence, under the rhetoric of ‘liberation of women’, it ought to be extended to other religious denominations. The aim of this chapter is to bring to the forefront the implications of the so-called progressive Hindu Code for women’s rights as the background of the constitutional debate on property rights of women. The importance of introducing this chapter lies in its contemporary relevance for providing contextual specificity of understanding the complexities of the issue of property rights of Hindu women and also its significance in providing many exemplars of the logic debated in the Hindu Code in contemporary judicial decisions and societal control in India.

HINDU INHERITANCE LAWS IN PRE-COLONIAL RULE

Mitakshara and Dayabhaga

Plurality of law and customs and the non-state legal structure were the essential characteristics of ancient Indian communities. The original texts were of Aryan origin. The diversity in customs and practices can be traced to the assimilation of Aryan and non-Aryan tribe.

The origin of the scriptural law can be traced to divine revelations. There was no distinction between religion, law and morality during the early period. They were cumulatively referred to as Dharma. The three distinct sources of Dharma are Shruti (the divine revelations or utterances primarily the Vedas), Smriti (the memorized words- the Dharmasutras and Dharmashastras) and Sadachara (good custom).^4^ Although the Vedas

were treated as the fountainhead of Hindu laws they did not contain positive law.\(^5\) Hence, the codified laws governing Hindu marriage and family relationships derive their roots from the \textit{Smriti} and \textit{Nibandhas} (commentaries and digests).\(^6\)

Against this backdrop of the legal systems, the traditional Hindu law defining the inheritance practices can be traced to the ancient texts- the \textit{Dharmasastras} and the \textit{Nibandhas}. The two distinct and dominant schools validated under the Anglo-Hindu law- \textit{Mitakshara} of Vijnaneshwar of the 11\textsuperscript{th} century and \textit{Dayabhaga} of Jimmyavahana of the 12\textsuperscript{th} century significantly influenced the legal practices in the British period as well as the subsequent formulation of the contemporary Hindu law. In Hindu laws, the main broad features of the two legal systems, which are relevant for understanding Hindu Succession Act are discussed as the following\(^7\):

The \textit{Mitakshara} system distinguished between two types of property-joint family property and separate property.

**Joint family property** –

This included ancestral property, that is, property that was held jointly by four generations of male members- a man, his sons, son's sons and sons' sons' sons- all of whom were designated as coparceners. Any property that was jointly acquired or was acquired separately but merged into the joint property was also included in it. A community of interests and rights was recognized in the joint family property for the coparceners on birth. Women were not entitled to be coparceners. Devolution was by survivorship. The living coparceners had an interest in the property of the deceased ones and the individual shares could be determined only in partition; these shares decreased in case of birth and increased in case of death among the coparceners. Property alienation was subject to strict restrictions. But each coparcener had the right to demand partition unilaterally at any time. Women were not entitled to be coparceners in the joint family property. They only had rights of maintenance as wives, widows or unmarried daughters.


\(^6\) A.N. Bhattacharjee, \textit{Hindu Law and the Constitution}, Eastern Law House, Calcutta, 1994, pp-17. Here, Bhattacharjee has argued the Nibandhas has already replaced the Smritis at the time of colonial interventions and thus, Smritis could no longer be considered as the source of Hindu law.

\(^7\) The \textit{Dayabhaga} system (12\textsuperscript{th} century) was utilized in Bengal and Assam and the \textit{Mitakshara} (11\textsuperscript{th}century) was utilized in the rest of India. Those two commentaries differed on the subject of inheritance.
Separate Property-

In contrast to the joint family property, a man had absolute right of ownership and disposal over his separate property. This included property, which was self-acquired, and any property inherited from persons other than his father, paternal grandfather or paternal great grandfather. Again, the share of ancestral property on partition provided he had no son, son’s son or son’s sons’ son, was also included in his separate property. In the presence of these male lineal descendents, however, the partitioned share was still ancestral property, as far as he and any of these descendants were concerned and his rights of disposal over it stood curtailed. In this property, the widow could inherit a limited estate but only in the absence of sons, agnatic grandsons and agnatic great grandsons. A limited estate refers that the woman could enjoy the property during her lifetime but after her, it reverted to her husband’s heirs. She could not alienate the property except under highly restricted circumstances, that is, in a period of severe necessity (later termed “legal necessity”) and within reasonable limits for performing pious and religious acts. A daughter (with unmarried daughters preceding married ones) came even after a widow and a daughter’s son after the daughter. In other words, for the daughter to inherit her father’s estate required the absence of the male heirs as well as the widowed mother. However, the daughter like the widow could receive only a limited estate.

Under the Dayabhaga system, a man was the absolute owner of all his property and could dispose of it as he wished. The son did not acquire an automatic interest by birth in the father’s ancestral property. Nor was there any principle of survivorship. Division of property among heirs could take place only at the man’s death and the property went in the first instance equally to his sons. The share of the pre-deceased son would devolve on the son’s son and failing this, on the sons’ sons’ sons. A “chaste” widow could inherit in the absence of male heirs but again as a limited interest with the right to manage but not alienate the property. Daughters came after the widow, unmarried

7 P.V. Kane, History of Dharmashastras, Asia Publishing House, Bombay, 1946.
6 “Agnate” - One person is said to be an agnate of another if the two are elated by birth or an adoption wholly through males. Such is the definition provided in the Hindu Succession Act of 1956.
7 The daughter’s son, unlike the daughter, received the property as an absolute estate. In the absence of daughter’s son, the property went to the deceased man’s parents and to his brothers and their sons
ones getting first preference and inheriting only a limited interest. However, in contrast to *Mitakshara* law, women inherited an interest in all property, irrespective of whether it was ancestral or separate. This implied that under the Dayabhaga system, the widow or the daughter inheriting some property was more probable than in the *Mitakshara* system.

Under both the systems, female property rights were recognized in the concept of *Stridhana*. However, its scope was also limited since there were varied and changing interpretations of what constituted *Stridhana*, how much control could a woman access over it and also the rules of devolution after the woman’s death. In the early Shastric texts, *Stridhana* consisted only of movables given to the woman by her parents, brothers or relatives, before or at the time of marriage and by her husband after marriage. Over the *Stridhana*, she was allowed absolute control. However, from the 7th century A.D. onwards there was much controversy about the scope of *Stridhana* and particularly the question of whether landed property should be included in the *Stridhana* and the extent and degree of control women should be allowed over it, were raised.

According to some commentators, under *Mitakshara* law any landed property that was included in a woman’s *Stridhana* as a result of it being acquired by inheritance or partition was of limited interest to her. But the Bombay sub-school held that property, which a woman inherited from a male of the family, in which she was born or inherited from a female, became her *Stridhana* and could be held by her as absolute interest. 8 In contrast, under the Dayabhaga law, *Stridhana* was defined as one over which woman has full rights of disposal and absolute control over it. But this effectively included only movable property.

Thus, according to both *Dayabhaga* and *Mitakshara* system, Hindu woman could inherit unmovable property such as land only under certain restrictive circumstances and at best enjoyed a limited interest in it. Men however, enjoyed a primary right to inherit and control unmovable property. True that men too faced certain restrictions in their right of disposal over joint family property under the *Mitakshara* law but it was essentially related to their rights as individuals and not to their rights as a gendered identity. Gender, thus emerged a defining parameter of discrimination in property rights against women.

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8 P. V. Kane, op. cit., pp-783.
There is however, immense diversity in the actual practices of Shastric prescriptions/laws in concomitant to the variations in different regions and communities. Regionally, there has been tension between the Shastras and local customs and rituals on marriage, divorce and inheritance practices. It is argued that among patrilineal Hindus in pre-colonial India, some affluent women did possess landed property but little does it suggest that the average Hindu woman largely owned landed property. However, in spite of this, one can hardly ignore the gap in effective rights in property. Among the patrilineal tribal communities in eastern and northeastern India women enjoyed only usufruct rights in land and the land that was inherited was of limited interest. Only in some instance of matrilineal and bilateral inheritance in southwest India (Kerala) and northeast India (Meghalaya) were property rights endowed on women. The Marumakkatayam and Aliyasantana systems customarily governed the matrilineal communities in south-west India.

**INTERFACE BETWEEN GENDER POLITICS AND HINDU CODE BILL**

**MULTIPLE DISCOURSES ON PROPERTY RIGHTS OF HINDU WOMEN**

The project of codification of the Hindu laws in the form of the Hindu Code Bill was a complex process of assimilation of the attempt of the colonial attempt to codify to bring the social-cultural and political aspects of native’s lives under judicial control and the post-colonial attempt of the educated native elite to reform and unify Hindu customs, laws and practices that largely governed Hindu lives. Infact, clearly the contemporary inheritance laws was a result of the underlying interplay of varying ideologies and interests and the conflicting pulls of scriptural rules and local custom. Although India gained independence from the British rule in 1947, the legislative activity immediately preceding Independence has to be understood as the relevant background for the Hindu Code Bill debates.

The history of the Hindu Law reform spans a period of fifteen years from 1941 to 1956. It was discussed in three Parliament of historical significance that is, the federal Parliament, the provisional Parliament and the first Parliament of the newly independent

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nation. The dilution of women's rights was evident at each of these stages of political deliberations. The powerful rhetorical content was camouflaged in the name of 'liberation of women'.

The early decades of the 20th century witnessed the concerted efforts of especially women's organizations and progressive male reformers to seek changes in the legal status of woman. The Women's India Association, the National Council of Women in India and the All India Women's Conference (AIWC) were prominent for their efforts to bring about gender-based transformation of society. The systematic course of action for asserting women's right to inheritance and divorce is documented by Forbes as: “Throughout the 1930s, the women's organizations formed committees on legal status, undertook studies of the laws, talked with lawyers, published pamphlets on women’s position and encouraged various pieces of legislation to enhance women’s status. At first these demands were presented as part of organisations’ general efforts to uplift women but by 1934 the AIWC passed a resolution demanding a Hindu Code that would remove women’s disabilities in marriage and inheritance”.

The reform of Hindu law was started by few social reformers who to begin, with did not have a systematic plan of action. Everett gives a list of federal legislative assembly members who were interested in making piecemeal changes to some aspects of the Hindu law. It was only when the avenues of political participation of Indians were opened up by colonial governments that the legislature became a new arena for social reform efforts of a small band of liberals. The Government of India Act of 1935 provided for the first substantively representative legislature for the Indians as it expanded Indian participation in governance further.

Parallel to this, women had been campaigning for enfranchisement and for representation in the legislatures. In the 1920s Indian women won the right to vote in several provinces. In the provincial legislative assembly election in 1937, 4.2 million women were eligible to vote, constituting 14 percent of the 30 million electorate. Enfranchisement was however, based either on the husband's tax status or on being

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literate. In the provincial legislatures, women were elected in 56 seats, making up 3.7 percent of these legislatures. In the federal legislatures too, women were given entry but in a limited way, that is, only 6 seats were reserved for women in the 260-member council of states and 9 in the 375 member federal assembly.

By the 1930s, many women's organization had initiated concerted efforts to enhance women's legal rights in property. A group of liberal male lawyers elected to the government's Central Legislative Assembly supported their efforts. A number of bills were introduced supporting Hindu women's legal rights but it encountered strong opposition from the orthodox Indian members of the Assembly and thus, was defeated.

In 1937, G.V. Deshmukh, a liberal introduced a bill in the Federal Legislative Assembly on Hindu Women's Rights to Property. It was passed but with some critical limitations. The Act gave the Hindu widow a right to intestate succession equal to the son's share in the man's separate property among those governed by Mitakshara and to all property among those governed by Dayabhaga. It also gave her the same interest as her deceased husband in the undivided Mitakshara coparcenary, with the same right to claim partition as male coparcener. But she could hold his share only as a limited interest, after which it went to her deceased husband's heirs and was also subject to forfeiture. On remarriage, the Act however excluded agricultural land on the ground that after the Government of India Act of 1935, agricultural property came under the provincial legislature and the daughter was left out altogether from the purview of the Act.

Though this was far from the comprehensive legislation that women's organization were seeking, nonetheless, it was indeed the foundation for a more wide ranging legal reform and codification of inheritance laws. Public opinion on the question of codification of personal laws was mobilized by publishing articles in periodicals, meetings with politicians, attending legislative assembly sessions and presenting resolutions to government officials. Some male liberal leaders also played a role in furthering this process. The October 1928 issue of 'Stridhana' included an article by Tej Bahadur Sapru, in which he advised women to demand changes in Hindu law to improve

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12 "Intestate" – A person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect.
their status.\textsuperscript{13} V.V. Joshi, a Sanskrit scholar and member of the Baroda committee for Hindu Law Reform wrote an influential pamphlet arguing for comprehensive legislation on women’s property rights.

In January 1944, Hindu Law Reform moved into a new stage with the appointment by the government of an expert committee to consider certain points of Hindu law relating to women’s inheritance. The Rau Committee was directed to clarify the 1937 Deshmukh Act, particularly, the rights of the widow and deal with the question of enhancing the rights of daughters. Women’s organizations supported this move but were unhappy about the absence of women members on the Committee. At the same time, women faced a difficult choice between their struggle for gender equality and the national movement. This dilemma resulted from the fact that supporting a committee appointed by the British government was considered to be cooperation with the colonial rulers. Further, it became evident that not many among the nationalists were allies of the cause of the women when it came to codification the Hindu law because women’s legal rights in property and divorce would be serious threat to male authority. As some women argued: “Today our men are clamouring for political rights in the hands of an alien government. Have they conceded to their wives, their own sisters, their daughters ‘flesh to their flesh, blood of their blood’, social equality and economic justice”.\textsuperscript{14}

The Rau Committee decided to solicit the views of interested groups and individuals and distributed questionnaires to a selected cross-section of elite opinion which included legal professionals, women’s associations and social reform organizations and orthodox groups. Noting the many technical defects and ambiguities in the Hindu Women’s Rights to Property Act of 1937, which could lead to varying interpretations of women’s rights, the Committee felt that any attempt at piecemeal amendment would raise “all the controversies latent in the Act”. It suggested that “the better plan would be to leave the Acts to their operation for the present and enact a comprehensive law”.\textsuperscript{15}

The need to reform Hindu law was doubted by many parliamentarians. There was apprehension that a hurried legislation would threaten and alter the essence of Indian

\textsuperscript{13} J.M. Everett, op. cit. pp.16-24.
\textsuperscript{14} G. Forbes, op. cit. pp.74
civilization which was "the purity of family life, the great ideal of chastity and the great ideal of Indian womanhood". 16 N.C.Chatterjee, a Mahasabha member from Bengal asked: "What right did the Prime Minister have to initiate revolutionary bills which would shake the roots of the Indian civilization shaped by personal law which has stood the test of centuries and thousands of years".17 The allegation of subversion of Hindu ideas, culture and religion was not new. The Hindu Mahasabha was suspicious that such legislation would be a menace to the religious identity of India and bring about a Godless State.

There was another view strongly articulated. It was proposed that since the bulk of the legislation would effect the entire population by fundamental changes in the personal laws of the Hindus, it would require sufficient discussion and presentation for public opinion. However, Dr. Rajendra Prasad was not clear if such a move had been made. A case was built to incorporate the legislative measures in the election manifesto instead of being hurriedly pushed through. Further the Constituent Assembly which was elected for the primary purpose of framing the Constitution of India was not well equipped to deal with legislation of such fundamental significance.18 Concurring with Dr Rajendra Prasad views was Pandit Thakur Das Bhargava’s comment that the sense of propriety and proportion demanded that the principles which had existed for thousand of years should not be hastily brushed aside by legislation.19

The impact of the legislation on the tradition of customary law was a matter of concern in most debates. As Rajendra Prasad put it, "tremendous changes have come about without any legislation and are legalized under the sanction of custom which is ever changing and ever growing. I, therefore, do not see the necessity for a hurried legislation".20 Lakshmi Kanta Moitra of Bengal ridiculed the entire codification process as being an unwise and unnecessary exercise and as "a simple intellectual pastime;

16 N.C. Chatterjee Lok Sabha Debates, Volume IV, Pt II, 1955, 26 April.
17 Ibid, Pt II.
Codification for the sake of Codification."²¹ There was a feeling that the intended codification would lead to the furtherance of progressive ideas of a small, microscopic minority. As Rajendra Prasad argued that by making it obligatory on all to have resort to a court of law caused unnecessary trouble, delay, expense and uncertainty to the majority of population who, in any case, had always exercised the same right through simple inexpensive and unquestionable caste customs.²² Rohini Kumar Chaudhuri of Assam pointed out that a huge population dependent on agriculture and agricultural property would be excluded from the purview of the legislation which would cater to the interest of the so called ‘enlightened section’ or what Naziruddin Ahmad sarcastically called, ‘the ultra-modern’ section of society.²³

The First Hindu Law Committee Report was indeed instrumental in transforming the initial idea of modifying the rules of succession rights for Hindu women into a project for codifying the entire Hindu personal law which would give women legal equality. This decision to codify the entire Hindu personal law was a marked break from the policy followed successive British administrators as it did away with the policy of non-intervention in the religious personal laws of different communities.

In January 1944, the Government reconstituted the Rau Committee for the purpose of preparing a Hindu Code. By doing so, the Government effectively postponed enactment of the reformed laws without revealing itself as having given up support for the principle. The Committee published a Draft Hindu Code on 5th August. The main provisions were as the following:

1. Abolition of Mitakshara right by birth (this meant that property would pass heirs instead of serving coparceners) and principle of survivorship;
2. Equal property shares for the sons and widow of the deceased;
3. Granting half a son’s share to daughters in all intestate inheritance;
4. An absolute estate for the widow;
5. Introducing monogamy as a rule of law;

²¹ Ibid, pp. 135.
²² Notes of Rajendra Prasad, Sardar Patel’s Correspondence, Volume VI, 31 July, 1948.
Once again however, women's succession to agricultural land was excluded from the scope of the Draft Code.

These proposals were met with virulent opposition. The then law minister Biswas, on the floor of the house, expressed his distaste for daughter's right to inheritance from the natal families. The reason being that such a right also implied that each individual male would have to part away with a share of the property in favour of their sisters. Sita Ram Jajoo, Marwari from Madhya Bharat expressed his concern: "Here we feel the pinch because it touches our pockets. We male members of this house are in a huge majority. I do not wish that the tyranny of the majority may be imposed on the minority, the female members of this house."\(^{25}\)

Though the Second Rau Committee made vigorous effort to solicit public opinion on the idea of a Hindu Code, political consideration outweighed any other interest. It took two months long tour of the country to gauge public opinion and reaction to the draft. Table 1.1 compiles the results of the written and oral statements gathered by the Committee.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Opposing (%)</th>
<th>Supporting (%)</th>
<th>(N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Need for codification</td>
<td>63</td>
<td>37</td>
<td>599</td>
</tr>
<tr>
<td>Grant daughter's share in inheritance</td>
<td>72</td>
<td>28</td>
<td>315</td>
</tr>
<tr>
<td>Abolish limited estate for women</td>
<td>69</td>
<td>31</td>
<td>156</td>
</tr>
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The Committee justified its position by claiming that this Code would meet the needs of modern Hindu society and would be in accord with the Constituent Assembly's 'Declaration of Fundamental Rights'. There were black flag demonstrations opposing the Code in five cities. Reactions from women were mixed. The AIWC supported the Draft Code. While advocating equal inheritance for sons and daughters, the NCWI, several

other women’s groups as well as many individual women also supported the Code. But women in orthodox association such as the All India Hindu Women’s Conference opposed it. Among men, majority argued against it on grounds such as: abolishing the *Mitakshara* would adversely affect commercial enterprise; the divorce provision would undermine the family; women were incapable of managing property and were likely to be duped by male relatives if given an absolute estate; married daughters already received a share as dowry and unmarried daughters only needed maintenance and provisions of their marriage expense. Only about 7.5 percent of those whose opinions were recorded by the Second Rau Committee were women or women’s organizations but the gender divergence, in those views were marked. As seen in Table 1.2 below, only 7.1 percent of the women and only 35 percent of the men (or organizations other than women’s organizations) supported the Bill.

<table>
<thead>
<tr>
<th>Draft Hindu code</th>
<th>Absolute estate for widows</th>
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</thead>
<tbody>
<tr>
<td><strong>No</strong></td>
<td><strong>%</strong></td>
</tr>
<tr>
<td>Women (against) (includes both individual women and women’s organizations)</td>
<td>32</td>
</tr>
<tr>
<td>13</td>
<td>29</td>
</tr>
<tr>
<td>Men (against) (includes individual men and organizations except women’s organizations)</td>
<td>192</td>
</tr>
<tr>
<td>362</td>
<td>65</td>
</tr>
<tr>
<td>Total (against)</td>
<td>224</td>
</tr>
<tr>
<td>375</td>
<td>63</td>
</tr>
</tbody>
</table>


A careful reading of the debates on the Hindu Code Bill between November 1947 and April 1948 is a reflection of the arguments that shaped the content of the Hindu Succession Act in the next decade. The question of a share for the daughter from the patrimony was the epicenter of succession debates. Perhaps the most vocal protests were articulated against the clause of granting equal property rights to women. Dr. B. Pattabhi
Sitaramayya expressed the fears of the male population when he lightly remarked that he often asked his lady friends: "Why do you want a share? You are going to become the queens of another home. My wife has become the queen of my home and she is the unquestioned head of the family. She is getting the keys of her own safe and so will you get the keys of the safe of another home".  

It was pointed out that women traditionally were brought up with the purpose of being in marriage into another family. As Lakshmi Kanta Moitra put it, "The girl is made for her husband's family; she is not to become a part and parcel of the family where she is born. That is the whole thing. And therefore, no question of injustice or inequality arises".  

Referring to the effort of the Bill to abolish the limited estate of a woman regarding inheritance, Shrimati Hansa Mehta of Bombay emphasised the need to recognise a woman as an heir and entitle her to enjoy her property in her full rights. To be fair and equal she suggested that the daughter should get an equal share in the property of her father with the son and the son also should get an equal share in the property of his mother with the daughter.  

The issue of non-inclusion of agricultural land from the purview of the succession rights was a contested one. The explanation as provided by Dr Ambedkar for exclusion of agricultural land was that 'land' is a provincial subject on which any central legislation is ultra-vires. In order to avoid any conflict, agricultural property has been exempted from its purview. His justification was: "I believe there is no necessity that a uniform law of inheritance should apply to all sorts of property. Property varies in its nature, varies in its importance in the social life of the community and consequently it may be a matter of no mean advantage for society to have one set of law of inheritance for agricultural property and another set of law for non-agricultural property....land which is the foundation of its economic life had better be governed by the law of primogeniture so that neither the junior sons nor females may take part in the inheritance".  

Another line of argument was that daughter's inheritance in landed property would lead to fragmentation of land finds resonance in contemporary judicial decisions.

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26 Ibid. pp. 841.
too. What was overlooked was that fragmentation was inevitable if the property had male successors. Shrimati Hansa sums it up as: “If a man has more than one son; if he has, say, four or five sons the land has to be fragmented; why is the argument not trotted out then, and only trotted out when the question of daughters inheriting the property comes up? The better thing would be that there should be law against fragmentation and the property should be sold if it goes below the prescribed limit. Or there is another alternative and that is collectivisation of the land”.

In spite of the opposition, the Rau committee published a report endorsing the Draft Code and submitted the Hindu Code Bill (a revised Draft) to the Legislative Assembly in 1947. Four months later India became independent. In April 1948, a further reversed Hindu Code Bill was introduced and was subject to intense debate in the Constituent assembly and subsequently in the Provisional Parliament. It was then referred to a Select Committee (Ambedkar Committee), which finished its report in August 1948. With regard to inheritance and succession the Ambedkar Committee Report had the following points:

1. Transformation of Mitakshara coparcenaries into tenancies-in-common;
2. Extension of uniform succession laws to areas of south India previously unaffected;
3. The fixing of a daughter’s share as equal to son’s shares;
4. Determination of order of succession based on natural love and affection.

The Hindu Code Bill was extensively debated in 1949 and 1951 by the members of the Constituent Assembly. Since the Congress leadership was divided on the issue, party discipline was not invoked during the debate. The extent of Congress opposition can be seen by party affiliations of the legislators who gave speeches supporting or opposing the Hindu Code Bill in September 1951. On the floor of the legislature the Hindu Code controversy was carried on through substantive arguments and through parliamentary maneuvers—points of order, motions, amendments. The 1949 and 1951 debates show similar arguments.

Citing the argument of imbecility of women for denying women the right to absolute property, Dr. Ambedkar largely contested the gentle image of a docile and helpless Indian womanhood. He contested that women “are always subject to the...
influence of all sorts of people and consequently, it would be very dangerous to leave women in the world subject to the influences of all sorts of wily men who may influence them in one way or another to dispose of property both to the detriment of themselves as well as to the detriment of the family from which they have inherited the family property. Emphasizing the need to trust the competence of women in deciding the disposal of stridhan property or widow’s estate, he tried to convince the house that there should be uniformity in recognizing absolute right to possess property. This indeed implied the creation of agency in women to take powerful decision about using property as a resource for well being.

There was strong opposition from male legislators. The opponents of the Hindu Code Bill asserted that changing position of women under Hindu law violated democratic ideals. They expressed the view that a majority of women were against the Hindu Code Bill and tried to show that women assembly members were unrepresentative of women’s opinion. It was labeled as a representation of elite demand. Pandit L.K. Mitra, a Congress legislator from West Bengal, who was most vociferous about this opposition, characterized those supporting the Bill as “a few ultra-modern persons who are vocal but have no real support in the country” and implied that only women of “lavender, lipstick, and vanity-bag variety” were interested in the Bill. He argued: “If daughters inherit ultimately the family will break up” and queried “Are you going to enact a code which will facilitate the breaking up of our household?” Another such opinion was found in the speech of Pataskar: “I cannot imagine of a family which can go on smoothly by the addition of daughters, their heirs and so on... It is admitted a daughter does go out of the family by marriage”. The Hindu Code Bill supporters tried to counter the charges of the majority of opposition in several ways. Jayashree Raiji, the Congress legislator from Bombay, asserted that it was incorrect to say that only a few women supported the Hindu Code Bill as the AIWC had received a favourable response in public meeting held all over India.

In their exchange on whether or not the Hindu Code Bill violated the democratic principle of fair treatment to all, opponents and supporters displayed different conceptions of proper organization of society. Opponents of the Hindu Code Bill asserted that men and women have different obligation which made it unfair for men and women to have the same property rights. They also pointed out that the Hindu Code Bill gave women double rights- both in her father’s family and in her husband’s family. They were, in effect the Western egalitarian, individualistic conception of women’s rights. Some opponents claim that women have equal rights under the Hindu law but that the Hindu conception of sex equality involved dissimilarity and identity. Other opponents claimed the women occupied a reserved position in Hindu society, and that identical property rights would mean a decline in their status.

The survival of joint family under the new law was a major concern for the traditionalists. Time and again the appropriateness of joint family as an effective social organizing principle of the Indian society was asserted. Acharya Kriplani for example, considered joint family system as “an insurance against sickness, against unemployment, against old age and even against “badmashi” of the young whether male or female.”

The Congress President, Pattabhi Sitaramayya warned the Hindu Code Bill would replace the socialistic structure of the joint family with an alien individualistic civilization. An appropriate opposing view was well expressed by Dr. Ambedkar as: “.....that the giving of the share to the daughter means disruption of the family. I must frankly confess that I cannot appreciate the force of that argument. If a man has twelve sons and one daughter, and if the twelve sons on the day of the death of the father immediately decide on partition and obtain a twelfth of the total property of the father, is the partition going to be much more worse, if there was a daughter, the thirteenth, who also demanded a share ? Twelve share or 12 fragments is not a better situation than 13 fragments. If you want to prevent fragmentation we shall have to do something else, not by the law of inheritance but by some other law, whereby property shall not be fragmented so as to become less useful from a national point of view for purposes of national production”. 


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The Hindu Code Bill supporters believed that the Indian society should be organized on the basis of equal rights for all citizens and they appealed to the ‘Declaration of Fundamental Rights’ in the Constitution as the authority behind their views. Ambedkar bitterly denounced Hindu sacramental marriage as being detrimental to the ideals of the Constitution. Many supporters including- Renuka Roy, Durgabai, Sucheta Kriplani- argued that political equality was meaningless without economic and social equality provided by female inheritance rights. Equal property rights were a marker of equal citizenship. Sucheta Kriplani argued: “If men and women are to work equally, if they are to function as equal citizens of the state, if they are to fulfill their obligations towards the state, how can we have such discriminatory rules in the matter of property rights of women?”

On the issue of Hinduism, opponents and supporters on the Hindu Code Bill blended religions and nationalistic arguments to attack each other. Opponents like Thakurdas Bhargava, a Congress legislator from Punjab declared: “Those who want to deal with Hindu law and the place of women In Hindu society should look at the question not through Western glasses but through the glasses of our own civilization”. The supporters argued that the Hindu Code Bill reestablished old tradition by citing Smriti references to women’s rights. Padmaja Naidu invoked the image of women’s participation in Civil Disobedience Movement when she said: “Thousands of Hindu women for the first time in their lives left the precious sanctuaries of their sheltering homes. They came to the battle field and stood beside their brothers and faced jail and lathi charges and often (enough), humiliation worse than death. If today....they are to be denied their just rights, then hard earned freedom is no more than a handful of dust”. J.B. Kriplani, a Congress legislator from Uttar Pradesh claimed that his wife Sucheta lacked none of the ancient virtues of Indian womanhood and added that they did housework too.

Another important aspect of this discourse was that dowry was equalized to be share in property. Many conservative parliamentarians debated that option to the daughter.

37 Ibid.
to get an equivalent share in the form of jewellery or cash at the time of marriage would compensate her enough for not being given the right to property. The fear emerged that partition of property between daughters and sons would endanger the right of the son to have a comfortable living. H.V. Kamath remarked: “May I quote the other instance where there are 12 daughters and one son. What will happen if the Hindu Code Bill as it stands is applied in this case? The family property will have to be divided among all the daughters and one son. The son will be left in a little corner of the house, and if the daughters get married, they have got the right to bring their husbands and they have the right to dispose of the portion of the House to a stranger. Therefore the one little son like a little mouse will creep here and there and he would pot have even a comfortable cosy corner to live in”. 39 The fate of the daughter when she is disinherited or abandoned is not a matter of concern here. The viability of property as an economic resource equally for men and women is ignored.

The politicization of societal norms of subjugation of women through various patriarchal modes of social control was also evident in the debates. The threat perception of a section of people opposing the succession right came to the forefront when they endorsed that the married daughter would not be welcome to their natal homes if they exercised their property right. Babu Ramnarayan Singh commented: “When the question of share comes what will happen is this. Ordinarily if you come to my place as a guest I may show you hospitality as my friend or this and that. But if you come by way of right I do not think you will receive any hospitality from me. I tell my friends that law will not help anybody, as soon as the right for the daughter will be created in the father's property I think all question of love will go.” 40 Such a circumscribed definition of gender role has gone far in preventing women in India from claiming their right to property even in contemporary times.

Similar fear about creation of family tensions within the paternal family was found in Lakshmi Kanta Moitra’s speech. In the same vein, Dr. Rajendra Prasad pointed out that induction of daughters’ husbands who were complete strangers into the family, to share property with brothers, would result in a “most heterogeneous conglomerate

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40 Ibid.
which would definitely lead to conflict and litigation". 41 In 1951, opponents also tried to
attack the Hindu Code Bill by proposing amendments designed to sabotage the Bill. Their
amendments could be classified into five main categories.
(1) Making the Hindu Code Bill optional;
(2) Applying the Hindu Code Bill to all Indians;
(3) Requiring the Hindu Code Bill to be ratified by all state legislatures or by the
public;
(4) Excluding Sikhs etc. from the reach of the Hindu Code Bill;
(5) Retaining customs.
Ambedkar rejected all these amendments. However in the face of stiff opposition,
even from top Congress leaders like the Home Minister, Vallabhbhai Patel; President,
Rajendra Prasad; Prime Minister, Jawaharlal Nehru. Although committed to the Bill it
was shelved in 1951. Ambedkar, law minister and framer of the Constitution resigned in
protest. However in 1951, riding on the strength of Congress electoral victory, Nehru
finally won the passage for the important aspect of Hindu Code Bill in four separate
Acts. 42 Of these, the Hindu Succession Act of 1956 forms the basis of Hindu succession
laws today.

The Hindu Succession Act as it emerged had many loopholes. The retention of the
Mitakshara Coparcenary, whose membership was confined only to males, meant that
sons would not only get a share of their father’s property but also their own interest as
coparceners in the joint family property. Daughters would only get an equal share in
paternal property. V. Prasad Rao of Hyderabad called this a case of ‘fractional justice’. 44
Additionally, the coparcener’s right to will away their share in the joint family property
and transform his self acquired property into joint family property could negate or reduce
the share of the female heir. The distinction made in the right of inheritance in a dwelling
house between unmarried, widowed and married daughters was discriminatory against
married daughters. As Lotika Sarkar put it: “A daughter who is part of an ongoing
marriage and subject to harassment and cruelty in her husband’s home cannot claim even

42 These were the Hindu Marriage Act of 1955, The Hindu Succession Act of 1956, The Hindu Minority
44 Hindustan Times, 16 May, 1956.
the right to residence in the family house".45 A woman who had deserted her husband was not to be given dwelling rights either. The reason cited for such deprivation was expressed by the law minister as: “I think those women who desert their husbands are not likely to be needy women for whom provision has to be made...I do not know whether we should provide for a women who deserts her husband, because she might desert him for the purpose of marrying another, or she has other means of maintaining herself”.46 Moreover, those daughters who had a right to residence could not demand partition until brothers agreed to partition their share.47 Finally, the unrestricted right of testation, i.e., right to make a will often led girls be dependent on their father’s good will for being provided in life. Female heirs were thus, often disinherited than not.

To Nehru the passage of the Hindu Reform legislation marked a victory. In his interview to Aubrey Menen, Nehru remarked that they constituted the greatest real advance in his career.48 In a report to his Chief Ministers, Nehru declared that the “passage of this legislation marks an epoch in India” for “it has pulled out Hindu law from the ruts in which it had got stuck and given it a new dynamism”.49 However, it was more of a symbolic victory than a substantive one. As he explained, “they are not in any way revolutionary in the changes they bring about and yet there is something revolutionary about them. They have broken the barrier of ages and cleared the way somewhat for our womenfolk to progress”.50 If not anything else it established the notion of women’s equality as a desirable ideal to which the Indian polity is committed.

Everett provides contrasting images of the ideal Hindu woman that the supporters and opponents of the Bill appeared to hold: “From the (1940s and 1950s) debates on the Hindu Code Bill two different images of the ideal Hindu woman emerged. The opponent’s image resembled the view of women presented in the Manusmriti, she needed the protection of men during all the periods of her life (thus, never capable of looking after property) and in this position of dependence thus, she was worshipped as a goddess.

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49 Jawaharlal Nehru, Letters to Chief Ministers 1947-64, Vol. IV, 10 May, 1956
50 Ibid.
The proponent's image of the ideal Hindu woman was a competent, autonomous human being interacting with others on the basis of equal rights and individual freedom. This image stemmed from Western liberal thought; however, imperfectly it had been achieved in practice in the west. The Hindu Code Bill opponents believed that the interest of men and women were better served when women occupied a dependent position and men and women played different social roles. The Hindu Code Bill supporters believed that everyone's interests were better served when men and women were independent and enjoyed equal rights. The Hindu Code Bill supporters operated within the equal rights perspective which had emerged as the dominant women's movement ideology since 1930s.\(^{51}\)

The Hindu Code Bill was widely debated even in the national and local print media throughout the country. It is significant at this juncture to read the debates of some early women writers in India. One such debate in a leading Bengali daily, Ananda Bazar Patrika in 1954 was between Anurupa Devi (1882-1958) and Saralabala Sarkar (1875-1961). Anurupa Devi, recognizing property as an agent of lineage perpetuation argued in favour of male inheritance rights. The mobility of women through marriage and their becoming 'par-kula' (other's lineage) was the reason for her argument for women's disinheritance. Property could be safeguarded only through male control over transmission of property.\(^{52}\) Her suspicion was that women's right to property would facilitate fragmentation of property. The lack of training in property management was yet another ground identified as a risk for women. Once again, dowry was considered to be a share in paternal property. Any further share would be unjust for the brothers.

In contrast, Saralabala in her reply to Anurupa Devi, analysed the economic benefit of accruing property rights. The economic independence of propertied women was an asset that all women needed to experience so that they could leave behind their slave mentality. She described women without property rights as: 'meek', 'dependent'

\(^{51}\) J.M. Everett, op. cit. pp.166-167.

\(^{52}\) Anurupa Devi, *Sahitye Nari: Srastri O Srishti*, (Women in Literature: Creators and their Creations), University of Calcutta, Calcutta, 1949, pp.7. It is a compilation of the lectures delivered by Anurupa Devi to the University of Calcutta in 1944.
and ‘needy’.53 They could learn property management skills only when they were endowed with the right. On the question of fragmentation of property she argued that even when property was distributed among brothers it inevitably led to fragmentation. How could a woman be deprived on such an unjust ground? It was conspicuous that the standards of justice were different for men and women. An important point she raised was that of prohibiting dowry. She was of the opinion that equal right to property for brother and sister would end the menace of dowry. Further if sharing property with daughters resulted in decrease in family’s property, then the wealth accrued through the daughter-in-law had to be factored in by the opponents of women’s property rights. Finally, she emphasized the role of women in perpetuating the family lineage.

The project of legal codification was a complex contested space of defining Indian/Hindu womanhood. traditional and the modern and also used as a means to contest The contest was for the inclusion of modern versus traditional elements in law on one hand and the simultaneous tussle between “modern liberal idea of the individual as a bearer of interest and an equally modern romanticisation of the sentiments of the extended family”.54 The systematic of women’s rights under the garb of bringing about a progressive legislation for emancipation of Hindu women cannot be overlooked. The emulation of the conservative Victorian system inheritance and marriage was an indication that the elite needed to reform the inherited colonial legal system first.

**GENDER POLITICS AND UNIFORM CIVIL CODE**

The discussion of the Hindu Code Bill on property rights of women would remain inconclusive till the debate on the Uniform Civil Code is included here in this chapter. The homogenization and unification of the ‘Hindus’ through the Hindu Code was subsumed within the need for integrity of the infant democracy. However the underlying overtones of the perceived threat from the existence of plural systems of legality were found in various junctures of the discourse. The positioning of the ‘Hindu’ as reformed

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53 Saralabala’s e·say, ‘Hindu ein committee bill Sambandhe Koyekti Katha’, (Some reflections on the legislation of the Hindu Law Committee). It was originally published in Anandabazar Patrika 12 (October), 1954.

and progressive as against the other religious communities was a problematic proposition. V.G. Deshpande raised the issue: "When I try to understand the meaning of the Hindu Code Bill, has it anything to do with the name ‘Hindu’? Does it signify that it is based on Hindu traditions, Hindu ideas, personal law and values……Government is going to introduce certain mischievous principles which it dares not to apply to Muslims, Christians, Parsis or Jews……The Hindus Code Bill is a big conspiracy to encroach upon the personal laws of the Hindus……The Hindus are …the objects off special favour from our great Congress government! When we come to oppose it, we are called communalists and reactionaries…and those who support it are the secularists, non-communalists and the nationalistic legislators…..why this personal law of the Hindus alone is being interfered with in this secular state?"55

Madhu Kishwar observes that the interest of the Congress seemed to be congruous with the views of the Hindu Mahasabha in this respect.56 N.C. Chatterjee of the Hindu Mahasabha made an intervening speech on counting the achievements of the passing of the Hindu Succession Act as unification of the Hindu community and making property liquid in the hands of the men. He said: "I ought to confess frankly that when I was a student of Hindu law…I was amazed at the wonderful diversity of the law, between the ‘Mayukha’ and the Dayabhaga, between the Mithila and the Dravidian school. There was almost a feeling of revulsion. I believe in Akhand Hindustan and…I wanted to have…one uniform Hindu law…Sir B.N. Rau advocated the introduction of Dayabhaga and complete elimination of coparcenary system. I was very happy….if you really want to develop trade and commerce, if you really want to build a new India, if you really want to develop your industries and your business in the private sector, you cannot do it under the antiquated system of law."57

The contempt for diversity and multiplicity of laws was a conscious attempt to bring about homogeneity in modernizing the Indian nation state. K. Santhanam argued: "….the great constitution….is based on the unification, on the integration and on the strengthening of India….. Similarly this bill is based on the principles of unification, integration and strengthening of the Hindu community…..the Hindus should be dissected

56 Madhu Kishwar, op. cit., pp. 2158.
57 Ibid.
under various regional groups...is pronouncing the doom of Hindu society. Sir, the enemies of Hindu society cannot ask for anything better. 58

There are numerous positions on the Uniform Civil Code debate. The case for legal uniformity rests on uniformity as signifying a consolidated nationhood, social homogenization and harmony as well as democracy, legal quality and individual rights for women. The assumptions on which the case for legal pluralism rest on a presumed antagonism between religious community and nation-state, the rights of ‘communities’ to have their own laws, the presupposition that personal law is tied with religious belief and a tacit division between the private and the public. The legal pluralism perspective also assume that uniform laws will be an agency of homogenization, that the preservation of social plurality or cultural diversity depends on maintaining personal law, that gender justice need not depend on legal uniformity and that women struggling for justice cannot unite against religious divisions.

The Constituent Assembly debates on Article 44 show that the underlying assumption was that the diverse laws and legal fragmentation contributed to, or at least were suggestive of social fragmentation. Nehru himself argued this point: “The object....is to have the first step towards bringing some uniformity...if you do not break down the barriers, first of all in the Hindu community itself, these caste barriers and the rest that keep each group apart and secondly, as between the Hindus and the Muslims and the Christians and the Parsis and the Buddhists and the Jains and all others who live in this great country, you will never build up that....national concept”. 59

An important reference point of the entire uniform civil code debate was the state versus the community. The question of gender justice was invisible. The heterogeneity of legal systems governing personal aspects of lives of people of various communities was considered to be retrogressive in nature. In the words of Kumkum Sangari, the particularistic legal homogenization undermines religious plurality, exuberates Hindus, and actively facilitates the ‘othering’ and ‘denationalisation’ of minority religions. 60

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59 Jawaharlal Nehru, Lok Sabha Debates, 14 September, 1954.


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was the logic for reform of the largest communities—the Hindus—and also for evading the threat to the integrity of the nation. Granville Austin has argued the belief that uniform laws were essential for modern nationalism was a mistaken idea. Austin found that “an unrealistic definition of the national unity and integrity resulted in an unwarranted fear that it was in danger.” He posited personal laws as a matter of religion that was analytically separate from the issue of nationalism.

In contrast to Austin’s approach, Justice Ruma Pal, a judge in the Indian Supreme Court presented a different perspective and argued that constitutionally, the personal laws were not a matter of religion at all: “the Constitution does not treat personal laws as religion though they may have been derived from it.” Pal noted that “difference in law create a feeling of disparity and inevitably resentment,” whereas “a uniform civil code would create a sense of ‘Indianness’ and strengthen national unity.” Pal’s position reflected an approach to personal laws that prioritized the question of nationalism but no less so that of religion.

Neither Austin nor Pal addressed the effect of personal laws on gender equity and women’s rights. The selective reform was codified in such a way that many liberal provisions for the advance of women’s rights were compromised. In a larger context, the deployment of conservative agendas shows the multiple ways in which various interest groups have manipulated the state and the Constitution in the name of cultural identity, thereby assuring subordinate position for women in the Indian society. The modern secular project of the post-colonial state seeks to create a homogeneous citizenry but this process ends up politicizing historical and cultural differences.

The fundamental problem with the national integrity discourse was the rejection of non-conformist practices that did not match a particular North India Indian, upper

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63 Ibid., pp.33.
caste construction of family. All other practices were not only marginalized but also considered to be not 'Indian'. The Hindu Code was thus an engagement to construct identities through the marginalization and exclusion of other interests. The obscurantist views on women’s role in society and other gender discriminatory practices were incorporated in the Hindu Code in sublime ways. Male privileges were maintained with some restructuring.

The issue of the Uniform Civil Code is both a substantive issue and a symbolic one. The gender factor is at the interface of tradition and modernity as well as secularism and communalism. Robert Baird in a study of implementation of the Hindu Code Bill and the Muslim Women Bill claimed that the basic issue of the personal laws versus uniform civil code was an issue of religion versus secularism but that the substantive issues were issues of gender. He drew a distinction between ‘broader principles’ and ‘concrete areas’ of dispute with the former being issues of religion and secularization and the latter being issues of gender. Llyod and Susanne Rudolph have provided a broader framework to delineate at least five distinct identifiable meanings for different groups. They were-

1. The British and the post colonial state, viewed it as uniform rules and regulations to ease administration;
2. Secular nationalists viewed it as a modern, rational means to diminish differences and promote national integration;
3. Civil rights activists viewed it as a way to ensure enhanced rights for oppressed groups;
4. Religious minorities viewed it as a means to erase their cultural identity and survival; and
5. Hindu nationalists viewed it as a way to eliminate special minority privileges.

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66 Nivedita Menon, Gender and Politics in India, Oxford University Press, New Delhi, 1999.
To locate the uniform civil code in the gender discourse, some major questions which need to be addressed. How will the class/caste stratification be integrated into a homogenized uniform law? Will such a law also incorporate elements of social heterogeneity? Can uniformity establish the idea of a secular and democratic nationhood? Do such uniform laws promote gender equality?

The women’s movement’s substantive argumentative position on the Uniform Civil Code has been shifting over the decades to include self criticality and aim for the affirmation of women’s advantages in society. While the demand for the Uniform Civil Code was first articulated in the colonial context, the women’s movement has moulded its opinion in accordance with national events. Initially, it was founded on the understanding that that the right of the community to autonomously manage its affairs through its personal laws was oppressed for women and inimical to their rights to equality. Personal laws, they argued, limited the choices available to women with regard to economic freedom and inhibited their equality by allotting them a subservient and dependent position in matters of family, inheritance and financial autonomy. The communalization of a series of events in the 1980s and 1990s and the consequent demand for Uniform Civil Code by the right wing Hindu groups led to the retraction of the demand for a Uniform Civil Code by women’s groups who shifted to a position which sought to reconcile gender justice with the right to equality of religious communities. There is a broadly drawn consensus on three possible ways of reconciliation- first, support for and initiation of attempts to bring about reform within personal laws; second, bringing about legislation in areas not covered either by secular or personal laws; third, setting up a comprehensive gender just framework of rights covering areas covered not only by personal laws but also by the ‘public’ domain of work which should be available to all citizens. The proposal is that wherever these laws do not conflict with personal laws, they should be automatically applicable and where they do conflict it should be up to the individual citizens to make their choice.

The discourse on modernity in the Hindu Code Bill debates emerged as a fragmented discourse. The non-synchronicity of the different aspects of modernity

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Ibid.
created a dichotomy between the processes through which legal rights seeking to reform women's condition on one hand and modern personhood embedded in a strong sentimentalized self on the other hand. Examining the motive for Hindu law reform, the 'hidden agenda' was unification of the nation through uniformity in law. The re-definition of the rights given to women and the re-orientation of female roles reflected a selective legal reform.

This contest was indeed exemplified par excellence in the Parliamentary debates over the claims for the new nation. The gender card was played repeatedly, the aim being not radical transformation within the social structure but the self-conscious construction of a progressive national imaginary that would reject regressive practices but retain certain traditional customs and the woman's circumscribed role within them. While the question of greater equality for women provided definite leverage for reforming some laws in line with the political and developmental initiatives, the process of reform was markedly piecemeal with little comprehensive socio-economic change to make legal provisions viable. The most prominent example was the contradictory approach to gender equality in which the aborted Hindu Code Bill was presented as being in accordance with the spirit of the new Constitution.

Though some of the most glaring discrepancies in the legal position of women were reformed, but it was a reform process in which the input of women themselves was marginalized and which the rights of women were subordinated to the modernizing impulse of the Indian state. Once more the task of modernization did not encompass the more democratic demand for complete sex equality. In any case, such a thorough going transformation of Hindu society was not even envisaged through these legal measures. If anything the laws may even has thwarted such an eventuality as Archana Parashar notes "The removal sex disabilities and the replacement of the superior status of religion with the state laws are both aspects of modernization yet the latter was achieved by compromising the achievement of complete sex equality".

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74 A. Parashar, op. cit. pp.19.
The most pertinent observation is that the gendered identities and gender discriminatory ideologies about sex role stereotypes that was vociferously debated in this chapter still continues be manifested in either explicit or latent forms in India even today, whether as the succession law or judicial decisions on property rights of women, state-led social policy controlling distribution land as a resource through land reforms or society initiated customary practices that define women's bargaining power to access and control property. The state may not be a neutral arbiter between competing interests. One of the key institutions-the judiciary - that has the capacity to integrate and innovatively define modern and traditional values and 'rules of social transaction' in the context of property rights is dealt with in the next chapter.