Chapter XVII

FINDINGS

The present study has been an attempt at testing the acceptability of the hypothesis that social legislation is implemented effectively in the society if it is in tune with the social structure.

In other words, the effective implementation of social legislation in the society is presumed to depend upon its compatibility with the social structure. The idea seems to have been well established as it has been pointed out by different authors in the fields of sociology and law respectively that a law remains ineffective in society to the extent it outruns social urge or that if a law enacted is not supported by the social conditions which uphold a custom to that effect, it remains more of a paper work than of actual use. Much social legislation has been enacted in India with a view to bring about social reform and eradicate social evils. A reading through the Parliamentary debates regarding each Act taken up for present study reveals that there was lot of opposition to each enactment while only a small minority favoured them. Eminent social reformers pointed out the need for each legislative measure but apprehended at the same time the actual ineffectiveness of the measures in society keeping in view the mild nature of the measures and the socio-religious customs prevalent in society being deep rooted. Two of the
Acts, The Child Marriage Restraint Act and the Hindu Widows' Remarriage Act, were passed during the British regime in India. Both these Acts were passed on the insistence of a few of the Hindu intellectual elite having zeal for social reform. The Hindu Widows' Remarriage Act is only a permissive measure whereas the Child Marriage Restraint Act is a prohibitive one. To this day, it is asserted by the opponents of social legislation used as an instrument for bringing about social reform, that both the above Acts have been ineffective. In the absence of enlightened public opinion to make these Acts work more effectively in society, the very purpose of social legislation is defeated. As regards the Acts passed in independent India, e.g., The Hindu Marriage Act, the Hindu Succession Act and the Dowry Prohibition Act, these came into force more out of the need to fulfill objectives enshrined in the Constitution of India, than out of the public opinion demanding them. It is pointed out invariably by various organizations interested in the emancipation of Hindu women that social legislation enacted for giving equality to women has given them equality merely on paper; in practice, there is no implementation or enforcement of it in society. The Acts are said to be respected more in their breach than observance. This was foreseen by some of the eminent men having knowledge about the significant relationship between the socio-cultural set up and the functioning of law; they pointed out that changes in institutions like marriage and inheritance, to be effective, should evolve from within the society rather than being imposed from without. It was also suggested by some members of Parliament that sample surveys
should be carried out to assess the compatibility of the proposed legislation with socio-economic conditions but this was not done at that stage.

The present study has been conducted on a stratified sample population taken from a medium-sized urban community. The sample was stratified on the basis of caste which is assumed to be a homogeneous socio-cultural group because of the generally prevalent norm of caste endogamy. Ten caste groups were selected to include both those castes which customarily prohibited and those which permitted the customs affected by the social legislation, and to include the predominately agriculturist castes in the town which was essential to verify the general statement that the Hindu Succession Act is opposed to the maxims by the agriculturists. The variables of social structure taken up for study, namely, caste, religion, religious sect, type of family, education, occupation and income were presumed to have significant relation to differential acceptance of the social legislative measures.

The relationship between certain variables of the social structure and the provision of social legislation has been attempted to assess their relative compatibility or incompatibility (consistency or inconsistency) with each other. This is done to assess how far the variables of social structure are amenable or averse to accommodate the legislative provision. The findings in brief revealing the effectiveness of each act under study are as follows:

The variables of social structure namely caste, religion, religious sect, education and occupation are found to be significantly related to the marriage age of women whereas the type of family is found to have no significant relation to it. It is borne out from the empirical data that the categories of higher castes, Sikh and Jain religion, progressive sects of respective religions, white collar jobs and medium to high education (matric to post-graduate), within respective variables are relatively more apt for higher marriage age of women. Both the lower incidence of actual child marriages and lower percentage of opinion in favour of child marriage among women being covered by the above categories of respective variables makes evident the fact of greater implementation of the Child Marriage Restraint Act among those whose socio-economic correlates are more amenable to its provisions. On the other hand, the categories of Hindu religion, its orthodox (Sangath) sect, no or nominal education and the occupations of agriculture and labour within respective variables are found to be relatively more apt for higher percentage of actual Child marriages as well as more of opinion in favour of marriages of women below the age of 15 years - which is a defiance of the Child Marriage Restraint Act.

Widow Remarriage Act.

This Act being a permissive measure, its effectiveness is assessed mainly in terms of being accepted by respondents
at opinion level. At the actual level its effectiveness can be measured from the query whether each widow of marriageable age in the sample population could remarry if she so desired or not. The analysis of empirical data revealed that there is practically no objection to the Act by the sample population of castes whose customary norms permitted widow remarriage. Even out of the sample population of castes whose customary norms prohibited remarriage to widows, a large majority opined in favour of the above Act. Only a small percentage of respondents from customarily prohibitive castes disapproved of the Act. None of the variables of social structure is found to have significant relation to the opinion differential regarding the Act. But the data in terms of percentage reveals the trend that relatively more persons of the Khatri and Agarwal castes, Sikh religion, Arya Samajist sect of Hindu religion and sectless Sikhs, medium to high education (matric to post-graduate), white collar jobs and the nuclear family type within respective variables are more apt to favour remarriage of widowed women; specifically, no Sikh, no follower of the Arya Samajist sect and none of the sectless among Hindus, out of the customarily prohibitive castes, disapproved of the above Act.

Though the Widow Remarriage Act is found to be quite effective at opinion level, the sample of actual incidence of ever widowed women shows that the permissive measure is not effective among customarily prohibitive castes as practically no widow of such castes was reported to have been remarried mainly because of socio-religious sanctions.
Legal provision for divorce and remarriage of divorced women.

Legal provision for divorce is again a permissive measure. This provision is approved of by less than half the sample population. The variables of caste, religion, religious sect, education and occupation are found to be significant correlates of opinion differential about this legal provision; the variable of family type is found to have no significant relation to the opinion differential in respect of the legal provision for divorce.

A relatively higher percentage of the sample population of castes which customarily permitted divorce and remarriage to women than the sample population of castes which customarily prohibited divorce and remarriage to women is found to favour the legal provisions to this effect. From among castes which customarily prohibited divorce and remarriage to women, none of the variables of social structure is found to have significant relation to the opinion differential about the legal provision of divorce. But the trend borne out is that categories of progressive religion, liberal religious sects, high education (post-graduate), white collar jobs and nuclear family type in their respective variables are relatively more amenable to the acceptance of social legislation relating to divorce and remarriage of divorced women.

Prior to the above legal enactments, castes which customarily prohibited divorce and the remarriage of divorced
women, considered the marriage union to be a sacrament having no scope for dissolution or remarriage. The analysis of empirical data reveals a highly positive association between the respondents' opinion regarding the nature of the marriage union and their opinion about divorce and remarriage of divorced women in that the legal provision for divorce, and remarriage of divorced women is favoured more by those considering the marriage union as non-sacramental, that is, a contract or mutual agreement. It indicates that a social legislative measure is approved to the extent that those affected are amenable to accept changes in all the conjoints of an institutionalised set of behaviour.

An almost reverse trend is observed in the case of the sample population of customarily permissive castes, in that the variables of medium and high education (matric to post-graduate), white collar jobs and nuclear family type are found to be associated with relatively greater disapproval of the legal provision for divorce. This may be indicative of the generally accepted fact about caste system in India that the socio-economically better section of customarily permissive castes imitates the norms and values held traditionally by the customarily prohibitive castes; but the trend is found to be of no significance for the sample population.
Legal ban on bigamy.

Though practically all the respondents in the sample population approved of the legal ban on bigamy, a large majority of them wanted certain exceptions to be made to the general rule of monogamy. As regards the relationship between variables of social structure and preference for bigamy under certain conditions, no variable except caste was found to have significant influence on the differential opinion regarding it. Even the trend indicated by data in terms of percentages did not reveal any difference between variables of religion, religious sect or family type and differential preference for bigamy. Only the variables of white collar jobs and high education (post-graduation) indicated a relatively lower preference for bigamy than others. A large majority of respondents in the sample population wanted exception, in the case of barrenness of a wife to the general ban on bigamy. The actual incidence of bigamy reported by them also revealed that the majority of such marriages were contracted because of the barrenness of the first wife. Again the most widely approved ground for preferring bigamy was reported to be the barrenness of a wife. It reveals how widely approved the norm of bigamy, is although under rare circumstances, and this makes the general effectiveness of the legal ban doubtful.

The actual incidence of bigamy is rare; only two cases of bigamous marriages were reported to have occurred during
Post Act period. Both the cases occurred because of the barrenness of the first wife and she was reported to have given her consent for second marriage to the husband. No socio-legal sanction was attached to these marriages.

Hindu Succession Act

This Act is also approved of by less than half of the sample population. The variables of social structure, namely, caste, family, occupation and income are found to be very significant in influencing the opinion differential in respect of the Hindu Succession Act whereas religion and education are found to have no significant influence on the differential opinion regarding this Act. The categories of the Scheduled Castes, Sikh religion, uneducated, occupation of labour, low income and nuclear family type within respective variables are found to be most apt to the acceptance of the Hindu Succession Act as compared to other categories. As regards, the respondents' own preference for replacing the traditional custom of dowry by an equal share for the daughter in the father's property, only a very small minority preferred a share for the daughter. Variables of caste and occupation are found to be related significantly to the preference differential for a share for the daughter. The trend revealed from data in terms of percentages shows that the categories of the Scheduled Castes, Sikh religion, nuclear family, no education, occupation of labour and low income within their
respective variables are most apt to the acceptance of legal provision of giving equal share to daughter in father's property.

The empirical data revealed practically no implementation of the provisions of the Act in the sample population of cases of actual inheritance during the post-Act period. As the above Act is applicable only to cases of intestate succession, the general trend is to evade it by either making a will relating to property in favour of sons or by dividing it in one's own lifetime among them. Though the sample of actual cases of inheritance is small, the trend revealed is that in the cases of inheritance during the post-Act period the incidence of 'will' or 'division of property in own life', in favour of sons increased four times its incidence during the pre-Act period. The inherent difficulties of the inconsistency of the economic vis-a-vis social factors, as revealed by the analysis of sample population, makes people most resistant to the provisions of Hindu Succession Act; hence it is accepted by very small proportion of people at opinion level and practically not at all, at actual level. The small section of respondents who expressed their preference for share for daughter in father's property, are those who are not affected directly by this Act as they belong to low income group who invariably do not own any property.
The Dowry Prohibition Act.

Though a large majority of respondents in the sample population approved of the Dowry Prohibition Act, they invariably asserted that they approved most of the clause of ban on demand and not the ban on dowry as such; a small minority approved of doing away with the custom of dowry. A large majority preferred to retain the dowry rather than replace it by an equal share for the daughter in her father's property. Only variables of caste and occupation were found to be related very significantly to the respondents' preference differential for retaining the dowry system while variables of religion, family, education and income revealed no significant relation. This indicates preference by a large majority of people, irrespective of socio-economic differences, for retaining the dowry. The data in terms of percentages revealed that the categories of the scheduled Castes, Sikh religion, high education, labour and white collar jobs, nuclear family type, low income group within respective variables to be inclined most favourably towards eradicating dowry system.

As long as a large majority of people do not want to give a share to the daughter in her father's property, the custom of giving her a dowry at the time of her marriage would continue and under such circumstances, the effectiveness of the ban on demand remains doubtful.
General Findings

The social legislation taken up for the present study has affected two institutions - the institution of marriage and the institution of inheritance. It has given women legal equality with men in matters concerning marriage and property. The Child Marriage Restraint Act, Hindu Widows' Remarriage Act, and Hindu Marriage Act having two main provisions - divorce and ban on bigamy, have affected the rights of women in the institution of marriage. The Hindu Succession Act and the Dowry Prohibition Act have affected the proprietary rights of women. The Acts regarding institution of marriage affect changes in certain attitudes and values whereas the Hindu Succession Act and the Dowry Prohibition Act affect changes in the property and economy of the people. As Srinivas writes "attitudes and values refer to processes which occur in the minds of men and women, and they may be referred to as the inner side of social institutions", the legal provisions for remarriage of widows, divorce and remarriage of divorcees and ban on bigamy seek changes in this inner side of the social institutions, that is, attitudes and values. Some of the general findings regarding the relationship between certain variables of the social structure and the attitudes and values about the institution of marriage, as it affects women, having influence on more or less acceptance of

* Srinivas, M.N.; Changing Institutions and Values in Modern India in Towards a Sociology of Culture in India.
social legislation are as given hereunder:

Social legislation is accepted by a higher percentage of those whose customary norms have been in tune with its provisions.

Permissive or prohibitive caste norms are found to have highly significant association to more or less acceptance of social legislation respectively. None of the variables of the social structure from within customarily permissive and prohibitive caste categories is found to be significantly influencing the opinion differential regarding social legislation. It reveals the supremacy or most significant relation of customary caste norms to the differential effectiveness of social legislation in that the customary prohibitive caste norms as such are found to be more averse to the acceptance of such social legislation as is incompatible with them.

The analysis of relationship between certain variables of social structure and acceptance of each social legislative measure affecting the institution of marriage has revealed the variables - caste, religion, religious sect, education and occupation to be significant correlates of differential acceptance of social legislation. This bears out our view that as the discrimination against women in different aspects of the institution of marriage derived main support from socio-religious factors, the legislation enacted with the object of removing that discrimination is met with
differential approval by sections of people covered by
different correlates within the respective socio-religious
variables. It is found that from among customarily prohibi-
tive castes, the categories of progressive castes, liberal
and progressive religion and religious sect, nuclear family
type, high education and white collar jobs are more apt for
relatively greater acceptance of the social legislation.
All these categories are correlates of progressive and not
conservative or of modern and not traditional elements in
society.

The variables of education and occupation are invari-
able found to be significantly related to the differential
acceptance of all social legislation. White collar jobs
and high education being prominent factors of the changing
social structure in India are found to have a positive
effect on the acceptance of social legislation which intends
to bring about social reform in the traditional social
structure. This reveals that the social legislation is
intended more to suit the need pattern of the day when the
traditional variables of Indian social structure are replaced
by the modern ones. In other words, the provisions of
social legislation are found to be more in tune with the
progressive, secular and rational elements of society whereas,
the orthodox or conservative or traditional elements are
found to adhere more to customary norms deriving support
from socio-religious factors; hence they are found to be
more averse to the acceptance of the provisions of social
legislation.
The legislation affecting most widely approved norms on socio-religious grounds is found to be accepted by a relatively higher percentage of only those having the highest education in the sample population, that is, post-graduation. It indicates the trend that the change affected by social legislation, in the most deeply rooted traditional norms deriving support from socio-religious factors of the social structure, is in tune generally with the most progressive and rational thinking which is influenced by high education, of the post-graduation level only. At the other extreme, this legislation is found to be most incompatible with the large majority of people having no or nominal education.

The general findings regarding the relationship between certain variables of social structure and differential acceptance of the Social legislation affecting the institution of inheritance are as given below.

The Hindu Succession Act and the Dowry Prohibition Act are so interrelated that the effectiveness of each depends upon the effectiveness of the other. Prior to the enactment of the Hindu Succession Act which entitles the daughters to have an equal share with the sons in the father's property in case he dies intestate, there was no such provision for a share of the daughter in the father's property. According to the Hindu Law, the daughters were not equal sharers with the sons in the father's property. The daughters would only get dowry at the time of marriage which consisted invariably of movable goods, which she could take with her to her new
home wherever it was. The amount spent on her dowry was not equal to a son's share in the father's property but she was given adequate monetary help from parents or brothers, at different occasions, for instance, at the birth of a child especially male child, at the marriages of daughters and sons, and if she became widow. It seems that she was not given dowry of as much value as a share for the son but she had a lien on parental property and out of that she was given monetary help both at the happy and sad occasions. It was obligatory for parents and near relatives to give as much as they could at the above mentioned occasions.

General observation is that amongst the low income group dowry for a daughter is more than the son's share in the father's property. There is usually no property in the case of most persons in the low income group, rather they leave behind debts which the sons have to repay. On the other hand, in case of rich people, dowry is generally less than the son's share in father's property. But a large majority of the rich and the poor desire to continue the custom of dowry though the income is found to have very significant influence on respondents' differential preference for dowry or share.

Analysis of empirical data reveals that social legislation pertaining to the institution of inheritance affects to a greater extent the economy rather than attitudes and values, hence the socio-economic variables are found to be significantly related to differential acceptance of such legislation while
the variable of religion is found to have no significant
relation to its differential acceptance. The variables of
caste, occupation, income and family type are found to be
related significantly to the opinion differential about the
Hindu Succession Act. It reveals that the variables of
social structure are amenable or averse to the acceptance
of social legislation in inverse proportion to the
significance of their relationship to the pre-legislation
rules of conduct or customary norms.

The social legislation affecting the institution of
property is approved mainly by only those who have no
property, hence are not affected directly by it. The
analysis of empirical data reveals that whereas social
legislation affecting changes in matters of attitudes and
values was more in consonance with the progressive section
of the sample population, social legislation affecting
changes in the matter concerning property, has not been
much approved by them even. And this is so because of the
basic incompatibility/certain provisions of this legislation
with the economic vis-a-vis marriage pattern of daughters.

It is revealed that more a variable of social structure
was conducive to the traditional mode of life, the more it
resists the social legislative provision affecting changes
in it. The customary mode of giving dowry to daughter and
the socio-economic variables of traditional social structure
formed a conglomerated whole but the provision of giving
equal share to daughters is found to be incompatible with