CHAPTER-IV
CODIFICATION OF HINDU LAW

“Nature gave women too much power,
The Law gives them too little”
--- Will Henry

As there is no Richter scale or measuring rod available to measure the position of women in a society, the best way to ascertain that is by taking a close look at the legal rights enjoyed by them. Law is an important institution in most contemporary society as it regulates controls and even pervades almost every aspect of person’s life.

Society is a union of individual units existing together for the fulfillment of multiple needs. This implies the existence of mutual dependence or symbiotic relationship. The concept of social legislation serves this purpose and transcends the conservatism of legislators who see law as a practical convenience rather than as a reflection of the total efforts of society as a whole in order to bring social harmony. It is clear from the above that law and society are two inter-dependent terms when viewed in relation to social legislation.

Social legislation may be defined as laws designed to retain and strengthen positive human institutions and to reduce the occurrence of negative and socially harmful behaviour, whether of groups or individuals. It is a vast field covering large areas of human activity, including as it does, all laws which are enacted in relation to the much needed changes in human society. Social legislation includes laws affecting social institutions such as, marriage, inheritance and adoption laws protecting the interest of children, women, physically challenged persons and the minorities or powerless groups. Hence, women have no definite customary rights.¹

¹ Interview with Dr.Neelavalli, Director, Initiatives: Women in Development (IWID) on 28.12.2010
Hindu Law has been ever growing and changing through the ages. During the British period, the legislature had interfered to effect various important alterations and additions. Due to social, religious and political propaganda, the joint-family system was visibly breaking up, but due to mostly other causes.

Hindu law was mainly based on the Smritis. There are three Smritis namely, the codes of Manu, Yajnavalkya and Narada. Hindus are governed by their personal law as modified by statute law and customs in all matters relating to inheritance, succession, marriage, adoption, coparcenary, partition of joint-family property, guardianship, maintenance and religious and charitable endowments.2

The legal framework or laws relating to women must be made clear, and for the purpose of this chapter, the broadest definition of the word, ‘Law’ shall be used as, it presents a comprehensive account of the distinctive logical or formal structure of laws and legal systems for the description of which it furnishes new concepts, of which the most novel and important is the concept of a basic norm.3 This makes law to comprise of not only constitution, legislation, administrative regulations, executive decree or judicial decision, but also all of the governmental decisions that are put into official form and translated into action. It is in this context, property right to women becomes the focus of our study.

Diverse Property Rights for the women of Different Communities

The right to property held by women differs from community to community in India: The Hindus, the Muslims, the Parsees, the Christians and others. During the British period and after, a number of laws were passed to improve the position of woman in relation to property. Hindu law is a growth of centuries-old principles and

2. N.D Kapoor  Rajni Abbi, General and Commercial Laws, p.15
3. The Fontana Dictionary of Modern Thought, p.772
considerable significance is also attached to customary law because, any compilation and analysis of laws concerning the status of women must cover also a situation where despite the appearance of equality between the sexes in the formal law, discrimination remains in effect. 4 In this connection, we would like to add that the participation of women in the ancient academic world was a zero.

There is no mention of women students at Taxila or any of the old universities. Bad as the legal position of woman was in ancient India, judged by modern standards, it was far better than in ancient Greece, Rome, early Christian world, medieval Europe, and indeed till right up to comparatively modern times at the beginning of the 19th century. 5

Law is a customary rule recognized as allowing or prohibiting certain actions and a collection of such rules according to which people live or a country or a state is governed. It also extends to a collection of laws as a social system or relating to particular activity. 6

J.D. Mayne has put forth the view that Hindu Law was originally independent of religion and based upon immemorial custom, and that the religious element subsequently grew up, and entwined itself with legal conceptions and then distorted them in three ways; firstly, by attributing a pious purpose to acts of purely secular nature; secondly, by clogging those acts with rules and restrictions suitable to the assumed pious purpose and thirdly, by gradually altering the customs themselves, so as to further the special objects of religion or policy, favoured by Brahmins. All of them are more or less speculative in nature. But what is certain is, as pointed out by Gooroodas Banerjee that positive law and moral or ethical law was not observed in

4. Ram Avtar, Justice and Social Order in India, p. 287
5. Tamil Arasu, 1988, p.30
the early Hindu jurisprudence. The whole body of rules regulating the life of a Hindu, in a relation to civil conduct, as well as to the performance of religious ceremonies, came to be included under the general name of *Dharma Sastra*⁷ or religious ordinances. Hindu Law is unknown to the principle of joint tenancy, except in the case of enjoyment of property by coparceners of an undivided Hindu Family.

Ownership and complete rights of a woman in respect to her separate property appear to characterize the laws in each of the countries in South Asia. Marriage does not affect her right of disposal in respect of such property. Leaving aside the separate property of a woman belonging to her before marriage or separately acquired thereafter, and apart from the communal (public) property, the rights of succession of a woman in regard to the property of her deceased husband or father vary in the different countries. In Thailand, the widow has the right to inherit half of her husband’s property, the other half going to the children and the parents of the deceased. This appears to be the case in the Philippines also. In India, the widow under Hindu Law has the right of lifelong maintenance from her husband’s estate and has also the right of residence, but by a statutory modification of the law, the widow or the widow of a deceased son represents her deceased husband in respect to his share in the joint-family property.

In Mohammadan Law (India, Indonesia and Pakistan), a widow succeeds to 1/4th of her husband’s property.⁸ Unless there are children, in which case she gets 1/8th; and she also gets the amount of her dower from her deceased husband’s estate. In Indonesia, however, although inheritance influenced by Mohammadan Law, the widow, under customary law, is entitled to a suitable provision of money for her

---

⁷ The term, ‘Dharma Sastra’, means the scripture that deals about ethics, which describes about the moral norms and duties that should be performed by people.
⁸ Flavia Agnes, *Women and Law in India*, p.35
subsistence while her deceased husband’s property passes to the kin group in areas where the patriarchal system prevails. In Burma, husband and wife hold property jointly, and upon the death of one, the other is the principal heir.

Right to property comprises the right of inheritance and the power of disposal of property but, unfortunately, these two important rights are more or less denied to women. A daughter is as much a child of the father as a son but, the latter usurps all the inheritance to the exclusion of the daughter. The widow is the nearest relative of the deceased but her husband’s sons or brothers and cousins take away the property and she gets only maintenance. Though the property is in the name of women, but they have no control over them.⁹

The male members in a joint-family are the owners of the property who acquired interest in it by mere birth, while the females, one and all, be they daughters, or wives, mothers or widows are regarded as dependents. Their legal status in the family, in short, is that of mere dependence. A man can deal with his property any way he likes, and nobody can question his authority. Woman rarely gets the property and even when she gets it by inheritance she cannot dispose it of as an owner. She can spend its income only, and must keep it intact for the benefit of the next heir. If she exceeds her powers, the next heir can challenge her authority and annul the transactions.

An unchaste widow in all the provinces and an unchaste daughter or mother in Bengal is excluded from inheritance; whereas good moral conduct is never considered the necessary qualification of a male heir. Of the two heirs of the same degree of relationship, the male excludes the female. Certain females are relegated to a very inferior rank in the order of succession though they are nearer in point of

---


153
relationship. A son’s daughter comes in as an heir after the deceased’s father, brother’s son, brother’s son’s son and father’s father; if any of them be alive she gets nothing. A widowed daughter-in-law can inherit the property of the father-in-law only after his son, grandson, great grand-son, widow, daughter, son, mother, father, brother and nephews, grand-mother, sister, great great grand son and great great great grand-son.\(^10\) If nearness of relation, as we would naturally expect, was regarded as the criterion in deciding priority among the heirs, the inferior positions assigned to women in the order of succession were unjustified. But all these differences and preferences exist because of their legal disabilities.

The social factors that determined the place of woman are mostly dependent on the religious trend of the day. For in Tamilnadu, as every where else in India, religion has even been the key-note of the social gamut sounding both its weal and woe. Most of the historians have agreed that the Tamil civilization is primarily of a Dravidian type, a distant, though distinct glimpse of which one may have in the ancient realms of Ravana, Asuras and Rakshasas. In a society with a religion of that type, there was no such distinction as inferior and superior sect or even sex.

**Origin of Marumakkathayam**

Once Padmanabha Marthanda Verma (1240-1253) with Kotha Marthanda Varma was celebrating with the great joy the birth of a prince by giving away costly presents to Brahmins and others. He also identifies the boy prince with Ravi Varma Kulasehara, who was born to Jayasimha and Umadevi. Umadevi is regarded as a Princess of the Venad royal family, and Jayasimha as a Koil Thamburan. It is assumed that when Padmanabha Marthanda Varma died, Prince Ravi Varma had not come of age and that in the interval the government of the State was conducted by

\(^{10}\) Kulwant Gill, *Hindu Women’s Right to Property in India*, p.310
Umadevi with the assistance of Jayasimha. When Ravi Varma became a major, he had succeeded to the throne of Venad, in accordance with the matrilineal system or Marumakkathayam, from then onwards Marumakkathayam system came into existence.

According to the system of inheritance and succession, the people of Trivandrum as of the other parts of Kerala, may be broadly divided into Marumakkathays and Makkathays. Those who trace inheritance through the mother are Marumakkathays and those who trace inheritance through the father are the Makkathays. Till recently, several Hindu communities including the Kshatriyas, the Ambalavasis, the Nairs etc., followed Marumakkathayam system of succession.

Among the Hindu Nadar who is governed by the Mitakshara system of Hindu law, the form of succession is strictly Makkathayam. The Ezhavas had a mixed system of Makkathayam and Marumakkathayam. The Kammalas or Viswa Kammalas are Makkathays. The Scheduled Castes like the Pulayars followed no uniform system. They followed either Makkathayam or Marumakkathayam. The joint-family system was not found among them. The system of inheritance among the Kanikkar was a mixture of Makkathayam and Marumakkathayam, though the majority of them in Trivandrum District have been Makkathays. Among the non-Hindu communities the system of inheritance was patrilineal. The Christians of the District, as elsewhere, are Makkathays. As for the Muslim, it may be noted that unlike the Mappilas of the North who are mostly matrilineal, the Muslims of the Trivandrum District are mostly patrilineal.

11. A.Sreedhara Menon, Kerala District Gazetteers, p.22
12. Marumakkathayam and Makkathayam are the Malayalam synonyms for the matrilineal and patrilineal system respectively
The Marumakkathayam system was more prevalent in North and Central Kerala than in South India. However, as the system is considered to be peculiar to Kerala, scholars usually discuss about the salient features of the Marumakkathayam system of inheritance in order to understand the traditional matriarchal society of Kerala.\textsuperscript{13} Marumakkathayam is descent through the female line or through the sister's children according to which the family or tharawad, as it is called, consisted of all the descended heirs who are his sister's children, his own wife and children having no legal claim to his property.

**The Madras Marumakkathayam Act, 1932 (Act XXII of 1933)**

The government order requires that notice of marriages should be sent to the Tahsildar having jurisdiction over the place where the marriage takes place. Marriages may take place outside the Presidency of Madras where a Tahsildar (or the Collector of Malabar or South Kanara) may not be always available for this purpose. The husband has now sent notice of the marriage to the Tahsildar of Palghat, who is not the Tahsildar of the place where the marriage took place.\textsuperscript{14}

The Act applies to classes of the Hindus who are outside the Presidency, and it seems necessary to provide for registration of marriages between the Hindu males and Marumakkathayi females which may take place outside the Presidency. Section 1(2) b of the Madras Marumakkathayam Act, 1932 is applicable to all the Hindus residing outside the Presidency governed by the Marumakkathayam Law of Inheritance. The rules lay down that the notice should be delivered either in person or by a messenger or by a registered post to the Tahsildar or Collector having jurisdiction over the place where the marriage took place.

\textsuperscript{14} G.O. 2539 Law (General) dated 31.7.1933
Legislations on Inheritance and Succession

Succession signifies the devolution or rolling down of property from one person, on his demise, to another. It may be either testamentary or intestate. Testamentary Succession gives effect to the intentions of the testator, as expressed in his will regarding the disposal of his property after his death. Intestate Succession takes place in the absence of a will that is both valid and capable of taking effect.\(^{15}\)

The Hindu Law of Succession for Women

Hindu life has control round the joint-family. Indeed, the joint-family was the normal condition of the Hindu Society. For centuries before the arrival of the British, succession among the Hindus throughout India, excepting Bengal, followed the Mitakshara rule of law. In Bengal, it was regulated by the Principles enunciated by the Dayabhaga. According to this law the son acquires no interest at birth in the ancestral property held by his father. He acquires an interest in this property only on the death of his father. All the properties governed by the Dayabhaga rules are inheritance in specific and defined shares.\(^{16}\) Both systems had their moorings in religion. The systems of succession in vogue among the Hindus were built with the male as the stock of descent.

For different times and conditions there must be differing standards. As against a Jaimini, there is no doubt a Baudhayana. On the other hand, the authority of one great and logical supporter of women’s just rights, like Vijnanesvara or Jimuktavahana, well out weighs the attempts of a multitude of smaller commentators to minimize those rights. It is well for those who habitually make too much of the supposed requirements of religious interpretation to remember Mill’s neat retort that


\(^{16}\) Uma Shankar Jha, Modern Women Today Tradition, Modernity and Challenge, p.267
“every established fact which is too bad to admit of any other defense is always presented as an injunction of religion”.

Among the Hindus, the unit of social life is not the individual but the joint-family. The basic aim of the Hindu Law-givers, was to preserve the joint-family under changing conditions and hence, property was sought to be saved from going outside the family.

The Hindus have been governed by different Schools of legal thought in different parts of the country. The Mitakshara System, with its four divisions (the Bombay, the Mithila, the Benaras and the Madras Schools) has been prevailing in various parts of the country, while the Dayabhaga System has been operating in Bengal. As Mulla observes, “no female can be a coparcener under the Mitakshara Law.”

Under the Dayabhaga System, the widow used to get a share in the joint-family property after the death of her husband.

Social function is no more recognized and she ceases to be an economic factor in society, and when she ceases to be economically independent, she falls a prey to masculine dominance. She grows soft and dependent, needs protection and fences, in short, she becomes the private property of man.

Wherever women have been economically dependent, morality has taken on a masculine cast. The more complex is the civilization, sharper the divisions of classes, and greater the economic and social struggle, the greater the trade in women. The rights of women to succeed to any property vary from one religion to another, depending on the personal laws followed by them.

\[\text{17. T. Sundar Lal, } \text{Mulla Principles of Hindu Law, p.200} \]
\[\text{18. G.B. Reddy, } \text{Women and Law, p.42} \]
created through state legislation, the cultural mechanism that inhibit legal reform and the ambivalence of turning to the law for women’s empowerment.

The law of the Hindu, until the establishment of the British rule, was not law in the sense in which the term is used by the modern jurists between municipal or positive law and moral law, and was not observed in Hindu jurisprudence. The whole body of rules regulating the life of a Hindu in relation to civil ceremonies was included under the general name of Dharmasastra, or religious ordinance.19

**Married Women’s Property Act, 1874**

The status of a married woman as a mere dependent is far from being enviable. It was not what the old law givers ever meant. Equality of rights is the war-cry of the present age and nothing short of that will satisfy their aspirations. If a wife is to be regarded as a co-owner in her husband’s property, she should have the right to question the transactions of her husband and show that they were not fairly necessary in the context. At least she should have the opportunity of protecting her interest from unjustifiable transactions of her profligate husband. Many a swindler and fool, squanders away the property reducing her to abject poverty.20

A son can say that father’s debts were immoral and his transactions were not for family property. Moreover a wife generally adds considerably to the wealth and exertions and she is entitled to examine the purposes for which the whole property is disposed off. Take the case of a widow, the husband’s death is a death-blow to the wife’s status in the family and her authority over the property.

A woman, who had ruled the family and enjoyed the luxury during her husband’s existence, immediately after his death becomes a dependent on the family. If she is a co-owner how is it that the husband’s death could extinguish her right? This was the question the great founder of the Bengal school challenged his

---

19. *Stri-Dharma*, June 1930, p.166
contemporaries to answer, and he answered in the negative. That position is sound on principle.

But today she is pushed away and is given a bare maintenance while her sons, grandsons, or great grandsons or her husband’s brothers and nephews take his property. At present, she is left to the tender mercies of her sons or grandsons if her husband was divided or her father-in-law and brother-in-law if she was undivided. Sons are usually desirous of keeping their mother well provided for but if they act on the counsels of their wives, the widowed mother is driven to the court to obtain maintenance. Grandsons at times and also her husband’s brothers and nephews invariably refuse to maintain her and endanger her right of maintenance by disposing of the property. Woman loses her right of maintenance and is disqualified as an heir if she is considered unchaste. This principle gives rise to unfortunate attacks on her character. Many times she gives up her larger rights, because of the fear of bad description of her character.

During the British period that followed the establishment of the All India Women’s Conference the government had to shed some of its rigid attitude as a result of the feminist movement spearheaded by the All India Women’s Conference and other women’s organizations whose lobbying efforts bore fruit in the form of several laws, and the important one was the Married Women’s Property Act.

The Married Women’s Property Act (Act III of 1874) was one of the earliest laws which widened the scope of Stridhan. Under the Act, the separate property of the woman included

(i) wages and earnings of married woman in any employment, occupation or trade carried on by law
(ii) money acquired through literary, artistic and scientific skill
(iii) all savings from and investment of such wages and
(iv) a Policy of Insurance effected on her own behalf. 21

This extensive definition of Stridhan increased the right to own and acquire property and thereby provided an incentive to women for being engaged in remunerative outside work. It is due to this, that a woman can lead an independent life inspite of opposition and even despicable description of her character.

The exemption of the two major communities from some legislative changes in personal law meant that there were certain provisions which could only be applicable to Christian and Parsee women and the minuscule community of Jews. The sect. 2 of the Married Women’s Property Act of 1874, specifically excluded the Hindus, the Muslims, the Buddhists and the Sikhs, since it was “not considered appropriate to deal with the matter by legislation, because they were governed by their personal laws”. 22 The Act permitted married women to administer their self-earned money and protect their benefits from a life policy of trust made in their names by the husband against the husband’s creditors. 23

But Christian women still live under the Indian Christian Divorce Act of 1869, the Indian Christian Marriage Act of 1872 and the Indian Succession Act of 1865 which are inadequate to meet the requirements of changed social conditions and concepts. The Christian community and its representative bodies have yet to respond to these much felt needs. The same proposition holds well in regard to church laws.

This furthered the provisions of the Indian Succession Act of 1865, which had established that by marriage the husband does not acquire any rights in the

23. Angeles Almenas Lipowsky, The Position of Women in the Light of Legal Reform, p.80
property of the wife. English Married Women’s Property Act 1874 had successfully put an end to the principle of covertures, whereby entity, the Indian Act intervened to diminish the enormous economic disparities between men and women within marriage.  

The Act extended the principle of separate property before marriage and the continuation of full powers over such property as guaranteed by the Indian Succession Act of 1865 to the wages and earnings of married women. Even a law which was intended to benefit propertied women, however, operated in ways that tended to increase the burden of women, by making them responsible and liable for post-nuptial debts if they had been married after 1865.

The Married Women’s Property Act was enacted in 1874 and it gave an extension to her rights over *stridhana*, and as we have already told that woman had the provision for separate property under this Act. This Act also provided her opportunity to have absolute right over separate property. It was so, because the English judges could not believe that the Hindus had been so advanced in the olden days that they gave absolute right over property to their women viz., Stridhan, whereas in England, until the Married Women’s Right to Property Act, 1882 was placed on the statute book, the husband was the sole owner of all the property.

The Act was amended as the Hindu Law of Inheritance (Amendment) Act, 1929. The law recognized son’s daughter, daughter’s daughter, sister and sister’s son as among the heritable persons and these were placed immediately after father’s father and father’s brother. Though the ancient law was remarkably stringent in its provisions regarding the proprietary rights of women, there had been a gradual

development in the law of Stridhana, by which a woman’s right over her Stridhana, in certain cases, became absolute. These provisions were, no doubt, more significant than the provisions in the Hindu law, which though recognising certain proprietary rights of woman, did not allow them any independent right over their acquisitions by labour and skills during covertures.

**Legal Disabilities of the Hindu Women**

The intolerable inequalities were that the law imposes, especially on the Hindu women, which is a blot on the Indian civilization. Woman as an individual, allocated with the subordinate position strikes at the very root of progress and peace. Because so long as there are any unjust laws that discriminate between human beings, just because of their sex, no normal and happy adjustment is possible. Economic freedom is the basic factor for every other kind of freedom, and this true even to woman. The woman, who has no means of her own, or rights to hold property and money to decide by her, cannot have any freedom that is worth the name.

Property Right of women is discussed under three heads. (i) Right in father’s Property (ii) Right in husband’s Property and (iii) Nature of her ownership.

**Right in the Father’s Property**

The word, ‘daughter’ signifies her status in the family she is born. In Tamil Nadu, according to the law, an unmarried daughter is entitled to get maintenance and marriage expenses. If the sons divide their father’s property, an unmarried daughter is entitled to get one-fourth of the share of a son in lieu of marriage expenses.\(^{27}\)

---

\(^{27}\) *Ibid.*, June 1934, p.364
According to Justice Ramesan, present provision for the marriage expenses is the historical remnant of a daughter’s right, that she acquired by birth in her father’s property. In the Madras Presidency the Hindu marriage extinguishes her right in father’s family and thereafter her husband’s family is liable for her rights. If her father dies without having a son, grandson or great-grand son, she succeeds to his property after the death of her mother. If she has brothers or if her father was joining with others, she does not succeed him. As between daughters, the inheritance goes first, to the unmarried daughters, next to the daughters who are married and poor, and lastly to those who are married and rich.

In Bengal, daughters who are barren or widow without a male issue or mothers of daughters only who are unchaste are excluded from inheritance. A daughter takes limited ownership in the property inherited.

The fanciful distinction between the married and the unmarried, between the poor and the rich, between the barren and the one bearing male issue, which the present law makes, is quite absurd. The provision made for the daughter, in the law is both meager and unjust. Only in Bombay, the daughter gets absolute ownership.

**Right in Husband’s Property**

The married women’s rights as wife or widow in the husband’s property will be discussed under this head. The marriage puts an end to daughter’s right in her father’s family and creates new right for her in the family of her husband. A wife is entitled to be maintained by her husband. If a partition takes place between her sons or between her husband and sons, she can get a share equal to that of a son’s share.

The husband is the absolute owner of his property, he can deal with his property either self acquired or ancestral in any way he likes, and his wife can question neither his authority nor the property of the transaction over property acquired by a wife either by mechanical arts or personal skills or as gifts from strangers. The husband has domination over her and his consent is necessary before she can deal with such property.

Women need courage and confidence and the will to speak for justice. The married mother should be able to claim that a sufficient share of the husband’s income should be allocated to the education and maintenance of the children according to their needs and number. The unmarried, deserted or divorced mother should be able to gain, practical recognition of the father’s responsibility and to obtain from him a share to spend for the education of the child.

After the death of husband, his son, grandson, or great grandson or in case of joint-family his brothers and nephews succeed to his property and the widow gets only maintenance. A widow succeeds to the property of her husband if she was divided from his brother and died without leaving a son, or a grandson or a great grandson. She has only a limited ownership of such property.\(^{29}\)

**Limited Ownership**

Her rights of maintenance and residence do not amount to a legal charge so as to attach to the family property and be available against the person taking it. These rights can be defeated by transfers affected by other male members for reasons not justifiable. A wife or widow cannot resist the transactions and protect her rights of maintenance and residence.

\(^{29}\) *Ibid.*, p.365
It is a notorious fact that the Indian women suffer from various legal disabilities, and is assigned a definitely inferior position in law. Legislation alone cannot bring about changes in the social order but law does serve some useful purpose in promoting social change. The major problem in regard to legal equality of sexes is the myriad personal laws that are in vogue which lack of uniformity and there is no Uniform Civil Code.\(^{30}\)

We have to refer the British legal system, in this context. The situation faced by the Indian rulers was more difficult and challenging due to the British legal system of legacy which, relegated women to an inferior position. Women had practically no legal rights in the family setting and the British policy of non-intervention in the personal laws of different communities, especially in the field of family law, had a crippling effect on women. The diversity of law and community differences became an obstacle to unified demands for improved legal rights. Thus, the combination of different legal systems and the British policy of non-intervention created a gap between socio-economic changes in the country and the growth of the law.

To attain the objectives, enshrined in the Preamble to the constitution, the constitution guarantees certain fundamental rights and freedoms. Indian women became the beneficiaries of these rights along with the Indian men. In addition, she also became the beneficiary of the prohibition against discrimination and the guarantee of equality. But the mere guarantee of equality was not considered enough or even sufficient. Therefore, equality of employment opportunity for all citizens, without regard to sex, was also guaranteed, because it was recognized that in the absence of economic equality, legal or social equality would mean nothing. The contemporary trend in this field is to uphold legislation, which is in favour of women and children to protect their interests.

In this context, we are reminded what Lenin said:

“All legislative traces of the inequality of women without exception must be removed.”31

The personal laws of a community in many ways are a part of the culture of individuals, like marriage laws, guardianship and wards laws, adoption and succession. It is now increasingly recognized that Christianity need not find expression through the western medium of culture, and it would be more appropriate for it to find expression through the native medium and indigenous ways. A hundred years ago, when the Hindu custom was found repugnant to the modern ways of thinking, it was necessary to introduce a new system of law. A list of Acts modifying the Hindu Law relating to women would be instructive

1. The Indian Succession Act, 1925
2. The Hindu Law of Inheritance (Amendment) Act, 1929
3. The Hindu Women’s Right to Property Act, 1937

**Indian Succession Act, 1925**

Since time immemorial, the framing of all property laws has been exclusively monopolized by men for their own benefit and women have been kept in such a state of subservience that they have rarely questioned any law laid down by them, even if it was totally nugatory with respect to their own rights. The result was an express codification of a woman’s secondary status in the society to make sure that she could not survive without male support and could under no circumstance lead an independent life.

---

The Indian Succession Act of 1925 is an Act consolidating the Law applicable to Intestate and Testamentary Succession in India. Prior to this there were nearly 12 enactments on the topic of Succession, the most important among them being the Indian Succession Act of 1865. The then rulers of this country were to be governed by their own personal laws. The two major communities, the Hindus and the Mohammadans, had their own personal laws and they were allowed to be governed by them. Besides there were the major communities, the important among them being the Christians and the Parsees who did not have any recognized law of succession. It was then considered that in their interest, the enactment of a law based upon the English Rules of Succession with modifications would be a just and equitable measure and the result was the Indian Succession Act, 1865, and many of the principles of testamentary succession were such as could be applied to the two major communities also. An attempt was made naturally to consolidate the entire law of testamentary succession in the Indian Succession Act, 1925. The basic principles of the provisions of the enactment dealing with testamentary succession and made applicable to all the communities with exceptions and provisions are derived from the English Law.

The Indian Succession Act, 1925, applies only to the Christians and Parsees, in so far as intestate succession is concerned. The two major communities have their own separate laws of intestate succession. The Hindu communities are now governed by the Hindu Succession Act, 1956, in regard to intestate succession. It has modified the pre-existing Hindu Law of the Dharma Shastras in conformity with the present day changed social conditions of the Hindu Community. It may be noted

32. N.S Bindra, Law of Wills, p.16
33. Indian Succession Act of 1925, p. 35
that one great object of our Constitution as stated in the Article 44 of the Constitution of India is to provide a Uniform Civil Code for the whole of India.\textsuperscript{34} There is a large volume of enlightened public opinion that the provisions of the Indian Succession Act, 1925, relating to intestate succession are equitable and just so as to be made applicable to all persons in India. It is a matter for regret that our Parliament has not kept in view the provisions of the Indian Succession Act 1925, while it introduced changes in the Law of Succession among the Hindu citizens. It is their duty to introduce such changes which could ultimately enable us to achieve our final goal of a Uniform Civil Code.

So far as Testamentary Succession among the Hindus is concerned, section 30 of the HSA now provides that any Hindu may dispose of by will or other testamentary disposition any property which is capable of being disposed of by him in accordance with the provisions of the ISA, 1925 or any other law applicable to the Hindus. Section 30 of the Hindu Succession Act, also enables a member of a Hindu joint-family to dispose of his interests in the joint-family property, as at the time of his death, by will.

At present the Hindus are governed by the provisions of the Indian Succession Act, as detailed in Section III of that Act, in regard to testamentary disposition by them. The provisions of the Indian Succession Act are largely based upon the principles of the law of wills as laid down by English Courts, but adopted to suit the different social conditions of this country.

The multiplicities of succession laws in India, diverse in their nature, owing to their varied origin can be broadly classified into two groups. The first set of laws was religion-based laws, and was ancient in point of time. The other set of laws

\textsuperscript{34} C.A. (Leg.) D., Vol.II, Part II, 25\textsuperscript{th} February 1949, pp.925-29
were man-made, passed by foreign legislative bodies involving the principles of English, Roman, Portuguese and French legal systems. The former consisted of the Hindu law, as it stood before the intervention of the legislature. There were also the Muslim law and the Parsee law, while the later referred to the Indian Succession Act, 1925, the Portuguese Civil Code, 1867 (applicable in the State of Goa) and the French Civil Code 1804 (applicable to some Indians Union Territories of Pondicherry). The notable difference between these two groups of laws was that the latter group of laws had no provision regarding the general exclusion of women from inheritance, and the former group of laws was unanimous in relegating women to the background with respect to inheritance.

Under the guard of religious injunctions and customs, the custodians of these laws, were very inferior or rather trivial, when compared with the rights of their male relations. An analysis of these religion-based succession laws show that they stem from a fundamental desire to secure and keep control over property in the hands of men and assert the superiority of one gender over the other.

The Parsee woman, the Christian woman and the woman married under the Special Marriage Act were governed by the Indian Succession Act. Their condition with regard to right to property was better than both the Hindu woman and the Muslim woman.

The rights of the Christian and the Parsee women to separate property were further expanded by the Indian Succession Act of 1925, which gave equal property rights to daughters and sons and the same rights over property to the surviving spouse. It no longer distinguished between patrilineal and matrilineal relatives. In 1929, the Indian Succession Act was further amended to stress the separation of

interest in property acquired before marriage, and each single partner’s full powers of disposal after marriage, although the act did not apply if one of the partners was non-Christian and non-Parsee or non-Jew at the time of wedding.36

The survey of the position of woman with regard to property rights reveals a number of interesting features. First, the Hindu woman, till recently, has been the most handicapped in respect of property rights. The Muslim woman, though legally better placed than her Hindu sister, has been suffering, in fact, the same hardships which the Hindu woman was suffering. It is unfortunate that still a simple, uniform, all-embracing legislation applicable to all the citizens irrespective of religious and other differences has not evolved in India even after Independence.

The contents of different Acts are important in studying different social problems of India. Some important facts have been focused upon by Gangrade (1978) in the second volume of his social legislation in India, to which a number of authors have contributed their articles and have assessed the functioning of different Acts. For instance, Sivaramayya (1978), while examining the Indian Succession Act, 1925, says that when two Hindus marry under the Special Marriage Act, 1954, they are entitled to adopt a child under the Hindu Adoption and Maintenance Act, 1956, but the adopted child is not entitled to succeed to their property under the Indian Succession Act, 1925.37

The Indian Succession Act, 1925, which governs the Christians, the Jews, the Parsees, and those married under the Special Marriage Act confers no restriction on the power of a person to will away his property, and the protection enjoyed by a Muslim widow to a share of the estate and by a Hindu widow for maintenance is

36. B.Sivaramayya, The Indian Succession Act, 1925, Social Legislation in India, pp.4-5
37. Ibid., pp. 8-9
denied to other widows under this law.\textsuperscript{38} It is desirable to place some restriction on the right of testation similar to that prevailing under the Muslim law to prevent a widow from being left completely destitute.

The amended law states that, in cases of intestate succession, the widow with no lineal descendant is entitled to the whole property if its value does not exceed Rs.5,000 or to a charge of Rs.5,000 in cases where it exceeds this amount. This provision is not extended to the Indian Christians, the Hindus, the Buddhists, the Sikhs or the Jains, succession to whose property is also governed by this Act. Since this provision gives rights to childless widows, its denial to these groups cannot be justified.

The Sikh religious leaders had demanded promulgation of Sikh Personal Law that denies land right to women, advocates remarriages of a widow with her brother-in-law, whether she agrees with it or not, known as Chada Andazi, and does not allow the right to property to the women members. Thousands of Sikh women, even in rural Punjab, openly opposed it. A brief observation of the custom among the Jains and the Christians becomes important.

(1) Jains: Among the preliminaries to marriage, the practice of one party giving property or money to the other party figures prominently. In marriage by purchase, a wife was obtained for money paid to her father’s family by the husband or his father (asura form of marriage) while the Jain law-givers did not approve of this method as a right form of marriage to be practiced by the people but, the practice was sometime resorted to by the lower classes among Jains. As early as 1904, the Dakshin Maharashtra Jains Sabha started a campaign against the irreligious custom of bride-sale.

\textsuperscript{38} N.S.Bindra, \textit{Op.cit.}, p.57
Christians in Kerala: The Christians in Kerala are governed by the Travancore Christian Succession Act, 1916, and the Cochin Christian Succession Act, 1921. Apart from multiplicity, these laws give only a life interest terminable on death or remarriage to a widow or mother inheriting immovable property. A daughter’s right is limited to Stridhana. Even in cases where she is entitled, she takes a much smaller share. There was the need for the immediate legislation to bring the Christian women of Kerala under the Indian Succession Act, 1925.  

Christian Law of Succession: Indian Succession Act XXXIX of 1925 governs succession to the property of Christian dying intestate. A husband has in his wife’s property the same right as she would have in his property if she survived him. Property devolves on the widow or widower, lineal descendants and kindred. The widow takes one-third of the estate in the presence of lineal descendants who, together with kindred, take the balance of the estate. In the absence of lineal descendants the widow takes half and the kindred take the other half in the absence of both lineal descendants and kindred the widow takes the whole estate. The children of a pre-deceased man take the share which might have been taken by such child or grandchild if survived the deceased. Among the kindred the father, the mother, and the brothers and the sisters receive, in that order, and in the absence of these near relations the property devolves on remoter kindred, the nearer excluding the more remote in degree.

Christians of Goa and Pondicherry: In Goa, the widow is relegated to the fourth position and is entitled to only fruits and agricultural commodities. In Pondicherry, the laws relegate a woman to an inferior position and do not regard her as full owner even in the few cases where she can inherit property. The extension of the Indian Succession Act, 1925, to these territories becomes a necessity.

39. Indian Succession Act, 1925, Sec.29 (2)
41. J.Thekkedath, History of Christianity in India-1542-1700, p.27
Parsee Law: Succession among the Parsees was governed by their own laws. In the case of the property left by the deceased, the first charge was on the debts which had to be paid off, and the rest was divided as may be provided in the will. In the absence of a will the wife first got back what she had brought from her father’s estate, and the balance was divided in the ratio 2:1 between sons and daughters. There were other laws with regards the several categories of married women and their children. For intestate succession among the Parsees, the rules of devolution of property of male and female intestates differ, resulting in discrimination against daughters and mothers. The son is entitled to an equal share in the mother’s property along with a daughter, but the daughter is not entitled to the same right to the father’s property. There is no justification for such discrimination.

The rules governing succession to the property of a Parsee dying intestate are also contained in the Indian Succession Act. On the death of a male Parsee, the property is divided among his widow and children. The widow and each son get double the share of each daughter, and when he leaves parents also, the father gets a share equal to half the share of a son and the mother gets a share equal to half the share of a daughter.

On the death of a female Parsee, her widower and children take the property in equal shares. The children of deceased parents also qualify for a share. If the deceased child was a son, his widow and children take his share as if it were his property. In the absence of children the widow gets her share and the balance reverts to the estate and devolves as part of the intestate’s property. If the deceased child was a daughter, her children take her share equally among themselves. This process goes on whatever the number of intermediate deaths.

When there is no lineal descendant, the widow or widower takes half of the property, and this share is reduced to a third where there is also the widow or widower of a pre-deceased lineal descendant. In the absence of the widower, a widow of a lineal descendant takes $\frac{1}{3}$; if there is more than one such widow, they together take $\frac{2}{3}$. The remaining was taken by the parents, in the absence of parents by brothers and sisters and next by paternal grandfather and paternal grandmother, and so on. It is also taken that each male heir gets double the share of each female heir.

(4) Hindu Law: Pre-independence India had several systems of succession among Hindus, in most of which the position of women was one of dependence with barely any proprietary rights. Even where they enjoyed some rights, they had only a life interest and not full ownership. The Hindu Succession Act, 1956, made some radical changes, the most important being equal rights of succession between male and female heir in the same category (brother and sister, son and daughter). It also simplified the law by abolishing the different system prevailing under the Mitakshara and Dayabhaga schools and extended the reformed law to persons in South India previously governed by the Marumakkattayam.\(^{43}\)

Its greatest progressive feature is the recognition of the right of women to inherit and the abolition of the life estate of female heirs. The Class I heirs of a man who take the property in equal shares as absolute owners are the widow, the mother, son, daughter, widow of a pre-deceased son, and sons and daughters of pre-deceased sons or daughters.\(^{44}\)

\(^{43}\) A Synopsis of the Report of the National Committee on the Status of Women (1971-74) p.53

\(^{44}\) All India Reporter, 1970, p.22
Unfortunately, traditional resistance led to some compromises in the original intentions. For instance, the one major factor responsible for continuing the inequality between sons and daughters is the retention of the Mitakshara coparcenary, whose membership is confined only to males. A number of decisions and laws like the Hindu Women’s right to Property Act and the Hindu Succession Act have made inroads in the concept of the coparcenary. The Hindu Code Bill, 1948, as amended by the Select Committee, had in fact suggested abolition of the coparcenary, i.e., the male right by birth, but traditional resistance was too strong. The compromise which the law now incorporates ensures that the female heirs of a male member of the coparcenary get a share of his property which is demarcated by a notional partition. In consequence, the sons get a share of the father’s property in addition to their own interest as coparceners. Under the Dayabhaga system, the daughters get equal shares with the brothers as there is no right by birth for sons. The right of a coparcener to renounce his share in the coparcenary and to transform his self-acquired property into joint-family property is frequently used to negate or to reduce the share of a female heir.\(^\text{45}\) We, therefore, desire for the abolition of the male right by birth and the conversion of the Mitakshara coparcenary into a Dayabhaga one.

(5) Muslim Law: Muslim Personal Law is part of the Shariat, which is based on the sayings of the Quran, which is ultimate.\(^\text{46}\) The Muslim women enjoy rights of inheritance of property as full and absolute as those of men. The other fact is that the Muslim law, while recognizing the rights

\(^{45}\) Sirkar, *Hindu Law*, p.817  
\(^{46}\) Nandita Gandhi and Nandita Shah, *The issues at stake*, p.254
of women to inherit,\textsuperscript{47} discriminates between male and female heirs of the same degree. As a general rule, the share of inheritance of a female is half (1/2) the share of a male of the same degree. The difference is, however, offset by a claim to dower which every Muslim wife has against her husband and an absolute obligation to maintain which every Muslim husband owes his wife. Mother, wife and daughter qualify for a share under all circumstances. The share of the mother varies from a sixth to a third depending on the existence of other heirs. The wife’s share varies from a quarter to an eight depending upon the absence or presence of children or lineal daughters. The daughter is also a primary heir. In the absence of a son, a single daughter inherits half the estate, and where there is more than one, all the daughters together take $2/3^{rd}$ of the estate.\textsuperscript{48} In the presence of a son, sons and daughters together inherit the residue in the ratio of 2:1. Mohammedan law admits a large number of relations of inheritance, and no relative whom Nature has placed in the front rank of affection of an individual is excluded; recommends legislation to give an equal share to the widow and the daughter along with sons as has been done in Turkey.

The Islamic Law, in contrast to the Hindu Law, has been relatively liberal about the rights of property for woman. It has made provision for a definite share for the woman in the father’s or husband’s property. A daughter having no mother gets half the share of her father’s share of property. If there are more sisters, they are entitled to two-thirds of the share collectively. A woman, having a brother, receives half the share of what the mother gets. The property inherited by a Muslim woman was

\textsuperscript{47} J.Krishnamurthy, \textit{Women in Colonial India}, p.114
\textsuperscript{48} A synopsis \textit{Op.cit.}, p.55
considered as her absolute property. A widow, according to the Quranic Law, was entitled to a prescribed share in the property. The share was determined by a number of conditions. Even the females co-existing with the males of the same degree or even of lower degree were allowed to inherit the property.

We find that the medley of laws governing rights of inheritance of female heirs, not only of different communities, but even of female heirs of the same community, require immediate reform based on broad principles like equal rights of sons and daughters and widows, and restriction on the right of intestate. We came across large numbers of women who were ignorant about their rights of inheritance, and so they were conditioned that they opposed the idea of sisters depriving brothers of the property. The purpose of the consolidated and general law would therefore be defeated, unless adequate publicity is given to its provisions, and women are educated about their rights. In the absence of social security, and adequate opportunities for employment, rights of inheritance in property provide financial security and prevent destitution to women. While it is true that property rights will benefit only a limited section, there is no doubt that they will make women independent and help them to improve their statuses, effectively checking the feeling that women are a burden to the family.

One of the reasons for the unsatisfactory state of affairs, particularly concerning the women’s right to property, was that men wanted women always to be under their control.

**The Hindu Law of Inheritance (Amendment) Act, 1929**

Seshagiri’s Bill received the assent of the Governor-General on 21 February 1929, and became a law under the name of then Hindu Law of Inheritance.

This Act, making ‘better provision for certain heirs, under Hindu law, especially with respect to women regarding their rights of inheritance.’ This Act in the direction of extending woman’s property right, to the whole of India, except the then Part B States. It was applicable to persons who belonged to the Mitakshara School and ‘to property of males not held in coparcenary and not disposed of by will.’

In the twentieth century, various social reformers fought against social evils including the lower status of women. One of its impacts in the field of legislation was the enactment of Hindu Law of Inheritance (Amendment) Act, 1929. This Act has given succession right to certain females in the separate property of a Hindu male dying without male issues. Those females were – Son’s daughter, daughter’s daughter and sister. They were placed after paternal grandfather and before paternal uncle in the list of heirs. Prior to the enactment of this Act, if a Hindu male had died leaving behind separate property, his property devolved according to the rules of succession, in which case certain females like widow and daughter were included, but their place in the order of inheritance was low, with the result that in the presence of the male heirs, they could not inherit even the separate property of the deceased husband or the father.

This law recognized son’s daughter, daughter’s daughter, sister and sister’s son as among the heritable Bandhus, and were placed immediately after father’s father, and before father’s brother. The Hindu Inheritance (Removal) of Disabilities Act, 1928, the Hindu Law of Inheritance (Amendment) Act, 1929, the Hindu Women’s Right to Property Act, 1939 were cautious measures of social reform during the British times.

50. *The Indian Council Act, 1929.*
51. *Legislative Assembly Debates, 26th Sept. 1929,* p.163
The Act of the Baroda State of 1933

The Baroda State was also a pioneer in granting right to own property to woman. Hence, Baroda state enacted a law recognizing a widow as copartner who could demand partition of the property. This Act was enacted in 1933. According to this Act, the widow was recognized as a copartner herself having all the rights of survivorship. She also could demand the partition of the property. On partition of the property, she was entitled to get an equal share to that of the son, and in the absence of a son, the entire share which her husband would have secured. The property could be inherited by her along with her son. The widowed daughter-in-law ranked after the mother. As for the daughters, all acquired equal right. The widowed daughter had the right of maintenance from her father’s property provided she lived with her father since the death of her husband, and the father-in-law was unable to maintain her. A woman acquired absolute control over property provided it did not exceed Rs.12, 000/.

The Hindu Women’s Right to Property Act, 1937

The Hindu women had either no right in the coparcenary property or had very limited right known as ‘Hindu Widow’s estate’. If a coparcener died without claiming his portion in the coparcenary property, his widow had only a right of maintenance against the property. A Hindu daughter succeeded to the property of her father, only if there were no sons, grand sons and great-grand sons or wife. The first major change in this behalf was brought about in 1937 by the Hindu Women’s Right to Property Act. This Act was known as Deshmukh Act as the Bill was introduced in the Legislative Assembly by G.V.Deshmukh. Under this Act, a widow of a coparcener was entitled to succeed to the interest of her husband in the

53. A.K Bakshi, Women’s Right to Property, p.30
coparcenary property. However, she was entitled only to the ‘widow’s estate’ and was not made an absolute owner of the share. This created a number of legal problems.\(^{54}\)

One of the most important enactments, to give better rights to women in respect of property, was the Hindu Women’s Right to Property Act, 1937, passed mainly due to efforts of G.V.Deshmukh. Hence, we could say he was the author of the Hindu Women’s Rights to Property Bill. In his speech he wailed that whatever little women had was snatched away by the Privy Council or it was perhaps better to say that the Judicial Committee of the Privy Council when it held that in respect of the prosperity got by inheritance on partition, a woman could have only a limited estate.\(^{55}\) That is she could enjoy the fruits of such property only during her lifetime and had no right to alienate it except for her maintenance or to a small extent for a pious religious purpose.

G.V.Deshmukh further pointed out that because of the prevailing circumstances the English judges came to the conclusion, that they did not want Hindu women to have any absolute right to the property. The result was that the right of a woman to property was practically taken away, and most of the Mitakshara law was abrogated so far as the Hindu widow was concerned.

The Hindu Women’s Right to inherit property was fought by the public. The champions of the cause reached their voice to the legislators, who supported the enactment of the necessary laws to achieve the end of giving equitable right to women in the property left by the male member to whom they were made heirs.

\(^{54}\) Encyclopedia on Social Work in India, Vol.2, 1987, Ministry of Publication Division, p.\(\text{vv}\)
\(^{55}\) Legislative Assembly Debates dated 4.2. 1937
The Act extended to the whole of India except the then Part ‘B’ States. It was applicable in the case of a Hindu dying intestate. The provisions of the law as embodied in Section 3 were applicable to a Hindu who died intestate, notwithstanding any rule of Hindu Law or Custom to the contrary. According to the Law, a widow was entitled to the same share which a son received in the case of property in respect of which he died intestate.

Mayne, aptly pointed out the advantages of the Act. According to him, the Act made “Mitakshara widow succeed to the coparcenary interest of her husband in the partable property of the joint-family and along with his male issue to his male issue to his separate property and to enable a Dayabhaga widow to succeed along with the male issue in all case”. 56

The coparcenary interest of a son in a Mitakshara family was alienable in Bombay or Madras though it was not so in Allahabad and Calcutta. The release of reversionary right in certain promissory notes was invalid. But a provision in a family statement whereby certain Hindu brothers divided family property belonging to them among themselves and agreed that upon any one of them dying without male heir (issue) his share would pass to the surviving brother was not in contravention of Hindu law nor obnoxious to the provision. A provision in a family settlement whereby certain Hindu brothers agree that upon the death of any one of them without male issue his share would pass to the surviving brother was not bad.

As for the self acquired property of an individual, wife, the daughter and the mother were as usual recognized as heirs. It should, however, be noted that the property they inherited was in the nature of a restricted estate, for at the death, it passed on to the next heir of the male from whom she inherited.

We recall that eight years after the 1929 Act another important legislation giving better rights to women in respect to property was passed namely, the Hindu Women’s Right to Property Act, 1937. This Act had affected the rule of survivorship prevalent in Mitakshara law in favour of certain widows. After the commencement of this Act i.e., 14th April 1937, if a Mitakshara coparcener died leaving behind an interest in the joint family property, then his widow took his interest in the property [Sec.38]. For example, if a Mitakshara coparcener died say in 1950 leaving behind his widow, father, brother, son and daughter, then whatever his interest in the joint-family property was at the time of his death, would be inherited by his widow [Sec.39]. If the same fact had arisen before 1937, say in 1935, then on the death of A in the above illustration, his interest in the joint family property would have been inherited by the surviving coparceners i.e. his father, brother and the son to the exclusion of his widow and the daughter who were perhaps more adversely affected by his death than the father and the brother. With respect to the separate property left behind by a Hindu male, 1937 Act enabled the widow of the deceased to inherit, even when he had left behind the male issue.

The Major lacuna of 1937 Act was that though it had given better inheritance rights to certain widows, it had not made them the absolute owners of the property inherited by them [Sec.40]. The widows were given only limited interest in such property, known as Hindu Woman’s estate [Sec.41]. It carried the declaration that they could not enjoy the property the way they liked. Their right to alienate the property was restricted only to the justifiable reasons under Hindu law like legal necessity or for the discharge of indispensable duties etc. The other major consequence of limited ownership was that after the death of the widow, the property devolved on the next heir of the last full owner, and not to her own heirs.

57. The Hindu Women’s Right to Property Act, 1937, p.17
Thus, though 1929 Act and 1937 Acts showed improved property rights for Hindu women, these did not match the property rights of men [Sec.42].

To summarize the gains, after independence, the adoption of the Constitution has brought important changes to the legal status of women in India. The Preamble of the Constitution solemnly resolves to secure to all citizens equality of status and opportunity. Article 14 in the Fundamental Rights confers “equality before the law and the equal protection of laws.” Further the Indian Constitution permits special provision for women and children under Article 15 (3), and apart from Fundamental Rights, the Directive Principles of State Policy take note of the unequal position of women in society and direct the States to take positive steps to give her equal status [Sec.43]. There are losses to be rectified still. It is disheartening to learn that even after fifty years of these constitutional mandates, a woman in India is often a victim of injustice in her own family, in the matter of property rights, particularly.

Pandit Jawahararlal Nehru, the first Prime Minister of India was concerned with the disabilities and difficulties suffered by the Hindu Women. To quote Pandit Nehru, “I am quite sure that our real and basic growth will only come when women have a full chance to play their part in public life. Wherever they have had this chance, they have, as a whole, done well, better if I may say so, than the average man. Our laws are man-made, our society dominated by men, and so most of us naturally take a very lopsided view of this matter. We cannot be objective, because we have grown up in certain grooves of thought and action. But the future of India will probably depend ultimately more upon the women than the men.” In spite of strong protest from the orthodox Hindus, Pandit Nehru pushed through the enactment of a revolutionary law.

58. Ibid.,
59. Constitution of India, Part-III
60. Jawaharlal Nehru, The Discovery of India, p.267
Though the Hindu Women’s Right to Property Act, 1937 had brought about important changes as far as widows’ property rights are concerned by giving them inheritance rights in the separate property, as well as coparcenary interest of the husband along with the right to demand partition for their share, and yet, it had not made those widows the absolute owner of the property inherited under the Act.

The Hindu Women’s Right to Property Act of 1937 recognised the intestate widow of a Hindu male. It also gave her a share in undivided interest of a Mitakshara coparcener. However, the Act was not valid if the deceased had disposed of his property by will and not applicable to agricultural lands. While there were more than one widow the share should be divided by them.

Conflicting views had been taken in regard to the validity of the Hindu Women’s Right to Property (Act 18 of 1937), and the District Court of Rajahmundry coming to the conclusion that so far as succession to agricultural land was concerned the Act was invalid; the Sub-Court of Tanjore, holding that measure was valid as the same was passed by the Indian Legislature before the introduction of the Provincial Autonomy, and the fact that the Governor General’s assent was given subsequent to 1st April 1937 did not affect its validity, and because of the conflict of views no definite opinion offered.  

The Hindu Code Bill

The Rau Committee was appointed in 1941, and that too after long years of meticulous study. Babasaheb Ambedkar worked hard at the Hindu Code Bill. He found the laws were confused and tried his best to modernize and introduced a system of uniformity. The Hindu Code Bill was debated in the legislature during

61. Amrita Bazaar Patrika, 31 March 1943
62. S.R.Bakshi and Kiran Bala, Development of Women, Children and Weaker Section, p.172
1943-44 in the Central Legislative Assembly; the committee submitted a draft code in 1944. The codified law aimed at bringing about a humanizing effect, recognizing that a woman has to have a life and an individuality of her own. While the Hindu Code Bill (HCB) was at this stage of consideration, women’s organizations worked to secure its passage through two methods: participation of women’s movement leaders in legislative debate and lobbying outside the legislature through public meetings, and delegations to political leaders. The women’s movement had excellent access to the legislature, to government leaders and to other sections of the westernized elites through personal relationships, and as recognized spokespersons for educated Indian women. However, in the face of strong opposition, the status of the women’s movement as an elite group representing a tiny fraction of Indian women became a liability. Especially in 1949 and 1951, women leaders were trying to convince politicians facing re-election to support demands that appeared to be very unpopular. The women’s movement failure to mobilize mass opinion further weakened their cause.

There were several important differences in the two periods which affected the consideration of the Hindu Code Bill. The first debate occurred during a period of war-time tension with most Congress leaders in jail since the Quit India campaign of 1942. While these debates took place during the last years of the colonial era, the second set of legislative debates (1949-1951) took place during the early years of independent India. There was a difference in the roles the two sets of legislators played in the political process (although some of the same individuals participated in both sets of debates). The members of the Legislative Assembly in British India were elected on the basis of a very narrow franchise. Secondly, the Hindu Code Bill was a more salient issue in 1949-1951 than it was in 1943-1944. The tour of the Rau

63. Radha Kumar, *The History of Doing*, p.97
64. Monica E. David, *The Legal Status of Women in India, Religion and Society*, p.34
Committee in 1945 and the subsequent assignment of the Hindu Code Bill to Law Minister Ambedkar in 1948 provoked much controversy. Finally, the Hindu Code Bill in 1949-1951 was a more radical document than it was in 1943-44.

According to Levy, she was persuaded by B.N. Rau to take the seat to argue for the Hindu Code Bill. Renuka Ray was a Congress member and voted against the government on other matters. The other woman member, Radabhai Subbaroyan, had been elected to the legislature on a Congress ticket and she participated briefly in the debate in 1944. Although Ray and Subbaroyan had held opposing perspectives during the 1930s on the women suffrage question (equal rights versus women’s uplift), they both agreed on Hindu Law reform. The following facts reflect its nature.

Part I: Intestate Succession

(i) Establishment of a unified Hindu Succession Law. (Dayabhaga and Mitakshara deferred)
(ii) Introduction of the daughter as a first class heir with the son (one-half of one’s share) and other female relatives as heirs.
(iii) Grant of absolute estate to women.

The attitude of the Hindu masses toward the bill was difficult to determine, as the Rau Committee report had only been circulated among the educated elites. Nevertheless, Renuka Ray cited the opinions of pro-reform scholars, judges, and lawyers as evidence that a majority of Hindus supported the Hindu Code Bill. This claim was similar to the claim that the AIWC could speak for the masses of Indian women. The opponents countered with the argument that a majority of Hindus were ignorant of the Hindu Code Bill.

The proponents were on firmer ground with the fair treatment argument. While opponent Bajoria (a Hindu communalist) argued that Hindu women could not manage property, Law Minister Ahmed countered that women of other religions enjoyed these rights in India and pointed out that the existence of female lawyers and legislators invalidated Bajoria’s blanket appraisal of female competence. Bajoria dismissed educated Hindu women as butterflies with social affectations, and he angrily retorted that social butterflies were the products of a man-made system. Bajoria had another exchange on this topic with Gupta, a Hindu Code Bill advocate: Gupta argued that property ownership would enable Hindu women to overcome their inferiority complex while Bajoria claimed that women had a preferential status under Hindu Law, as daughters were worshipped in the Hindu households. Pandit Thakur Das said that “granting equal property to women lead to a breakdown of the joint Hindu family, which was seen as the most fundamental unit of the society.”

Although there was opposition to the Hindu Code Bill in the legislature, the Government utilized its official bloc of votes to secure referral of both parts to Joint Select Committees. The Report of the Joint Select Committee on Part I was issued on November 13, 1943, and the committee recommended its recirculation as changes had been made. These involved the following points: (1) elevation of parents and widowed daughter-in-law to status of first class heirs; (2) grant to son of one-half of daughter’s share of estate of intestate Hindu female; and (3) presumptive right of male heirs to purchase female heir’s property and reversion of this property to male heirs.

On January 20, 1944, the government decided to revive the Rau Committee to draft a single Hindu code. The Rau Committee introduced the Hindu Code Bill into the Legislative Assembly in April 1947, and with advent of Independence and partition in August 1947, the Hindu Code Bill was not immediately considered. It

67. Ratna Kapur and Brenda Cessman, Subversive Sites, p.56
was then referred to a Select Committee (Ambedkar Committee) which finished its report in August 1948. While referral to a select committee had signified approval of the bill’s principles in the Legislative Assembly, there was disagreement over its meaning in the Constituent Assembly. The motion to consider the committee’s report was debated in the Constituent Assembly over 10 days from February to December 1949, and was passed on December 19, 1949. Because of the opposition expressed by many legislators, Nehru promised a process of informal consultation with Ambedkar regarding the Hindu Code Bill. The next step was the third reading (clause by clause consideration) and passage of the Hindu Code Bill was debated for three days in February, and from September 17 to 25, 1951.  

The Members endorsed changes that had been made by the Law Minister and added further changes. The presence of women’s movement leaders in the committee and the uncompromising posture of Ambedkar produced a more radical Hindu Code Bill. When the report was published in August 1948, the following points comprised the major changes from the Rau Committee bill of 1947.

**Inheritance and Succession**

i) Transformation of Mitakshara coparcenaries into tenancies in common.

ii) Extension of uniform succession laws to areas of South India previously unaffected.

iii) The fixing of a daughter’s share as equal to a son’s share.

iv) Determination of order of succession based on “natural love and affection”.

The legislative reforms gained a marked impetus after independence, and the legal system and the rule of law were strengthened. The objective of ensuring social justice, and economic equality led to a considerable body of new social legislation.

---


189
B.R. Ambedkar quoted that, “in our constitution we adopted a middle course; the course that we adopted was this, that while we will permit people to practice and to profess their religion and incidentally, to have their personal law because the personal law is so imbedded in their religion, yet the State has retained all along in article 25 the right to interfere in the personal law of any community in this country”.

The Indian constitution makers in the Directive Principles of State Policy denied a Uniform Civil Code. Though enactment of that code still remains a lofty ideal, an effort was made in 1955 to bring about a Uniform Civil Code of personal law for the Hindus in the whole country through the enactment of the Hindu Code Bill. The Codified Law aimed at bringing about a humanizing effect, recognizing that a woman has to have a life and an individuality of her own, devoid of economic dependence of woman, coupled with her ignorance of law and her rights.

As in the case of most of the Statutes, the teeth of the legislation are practically blunted both loopholes within the law, and by the resistance of social structures and by attitudes to change. Having bared so much of the various legal disabilities of the Hindu women, one will naturally like to know as to how they can be removed. To abolish them is to alter the law and only the Legislative Assembly can accomplish that task. Women’s agitation, if carried on vigorously far and wide may some day force the hands of the legislature to satisfy their demands with an appropriate measure of reform.

Constant propaganda from the platform and through the press will certainly triumph over even the bitterest opposition of the vast majority and there lies the hope for the success of their movement. The codified Hindu Law recognizes father

---


190
as the natural guardian for both boys and unmarried daughters. The prior right of the mother is recognized only to the custody of children below five and even this right is qualified by the word ‘ordinarily’.

A Nation’s Law reflects the socio-economic and cultural development of the society, especially directly related to women. The law gives all citizens equal protection with respect to their property, individual freedom, reputation and personal safety. Women are given special protection under the code.70

The British era of colonialism, incorporated in it the dominant position of the male, and the economic dependence and inferior social status of women. The legal right of inheritance touched them not. They inherit nothing but sorrow and pain, and this was the truth even in the previous generations. They are the producers of the wealth but, they remain beggars. Economic freedom in its genuine sense can become a reality only when there was a more scientific and sane system of production and distribution, and the forces of economic progress are consciously directed towards the good of all.

Till the time India became independent in 1947, the majority of its women, who belonged to Hinduism, were suffering great handicaps under the Hindu Law. They suffered severe limitation in regard to their rights to marriage, inheritance and adoption. As the women were regarded as inferior to men, they suffered from unjust things in life and in society.71

There are some of the factors that prompted the legislators to make various laws to give women their due share. Various laws have been enacted to deal with the personal matters like marriage, divorce, succession etc. in relation to women.

70. Ibid.,
71. P.S Joshi S Gholkar, History of Modern India, p.341
In order to remove social injustice to women and place them on par with men in respect of many rights, the Government of India, under the leadership of Jawaharlal Nehru, passed the Hindu Law. The Hindu Code also gave a right to inheritance to the daughters in their father’s property.\textsuperscript{72}

Our laws confer the right to property on woman only after the death of her husband. If a woman’s right in the property of her husband is recognized, she would start feeling secure and she would overcome her sense of helplessness and economic insecurity.\textsuperscript{73} The Bill grants the wife the right to live in the house of her husband, and the right to be consulted in matters of family business and other financial transactions regarding the husband’s property. This was indeed a radical change in the Hindu society.

The history of women’s rights has not been linear, with the religious and customary laws forming one extreme end of the scale, and the statutory reforms slowly and steadily progressing towards the other end, as it is popularly believed. Unfortunately, later legislations curtailed the right of absolute ownership of property. If they had enough women to speak at that time, they would have solved this problem. As usual the educated women of the Presidency showed interest in the legislation and tried their best for the safe passage of the Bill in the Assembly.\textsuperscript{74} They sent wires to the government expressing their support, and actually the government was flooded with telegrams.

The efforts of the women were rewarded by the government, which appointed a Committee under the Chairperson of Sir.B.N.Rau to examine the Hindu Women’s Right to Property Act, 1937 to remove any injustice done to the daughters.

\begin{flushright}
\textsuperscript{72} Ibid.,
\textsuperscript{73} N.Andal, \textit{Women and Indian Society}, p.227
\textsuperscript{74} Ashine Roy, \textit{Development of Women, An Assessment}, p.222
\end{flushright}
in the existing law. But due to the disturbed political conditions of the time, the possibility of progress to the work, and removal of women’s legal disabilities had become very little. However, in 1941, A.C. Dutt introduced a Bill to amend the Act of 1937 which caused injustice to the daughters with regard to inheritance, was rejected without a division.75

“The object of this Bill is to give a daughter that right of inheritance to which she is entitled under the text of Yajnavalkya and Vishnu and other exponents of Hindu Law and to which she is entitled in equality and justice”, said A.C. Datta. The object of the Bill was to make provision about the inheritance of the Hindu daughters. Every one who has studied the Hindu Law knows that, under both the schools of the Hindu Law, the Dayabhaga and the Mitakshara, the Hindu daughters come in after sons, grandson and great-grand son. Then comes the widow and then the daughter. In Bengal, Bombay and Madras there were different schools of the Hindu Law and they had to be consulted. Then one thing which had also to be considered during circulation by the public was this, whether the married daughter should have inheritance or not, because, if she went to another family and she did not get her inheritance to property, there the question before the public would be to consider whether she should have double inheritance both from the parental house, and from her husband’s house.

The merits of the Bill were that the subject of succession to property amongst Hindus was one which was completely beyond understanding, but, the experience of this House during the last 2 years had convinced all that it was also a subject which the Hindus themselves should not attempt to touch without a good deal of circumspection. The present Bill intended to provide for daughters in the scheme of

75. Ibid., p.223
the Hindu Law of succession amounts to mere tinkering with a most complicated subject in the realm of the Hindu Law.

A committee of experts, well-versed in the Hindu Law and legal drafting, should be constituted to consider the necessary reform in the Hindu Law of Inheritance and Succession to remedy existing defects in women’s rights, and to confer on the rights to inherit suited to modern demands and conditions, and the committee should make recommendations about the legislation necessary. A whole scheme of succession – the integral parts of which were closely intertwined and which have great inter-dependence on one another carefully planned through ages and ages by mighty intellects cannot be altered easily; changes should be gradual, and great care must be taken to see that the present conditions of the Hindu society fits in well with the scheme as a whole and creates no jerk or jolt or creak.

Legislation on matters of succession and inheritance is not easy; the Hindu Law of succession and Inheritance was particularly difficult and complicated, and any meddling with it, must be undertaken only by experts, after mature consideration and deliberation. For the above reasons many were against the Bill, even though the Act which it seeks to amend thoroughly defective in several ways.

A.C.Datta’s amending of the Bill to further amend the Hindu Women’s Right to Property Act 1937 did not in any way meet the demand of the Indian women to confer right to property on the Hindu women. This was not at all a far reaching measure and not comprehensive enough as to concede that right to which the Hindu women are entitled in the name of equity and justice.

This Bill was intended to give a status to the son’s widow namely, the widow of pre-deceased son and include her in the list of heirs. She thus got an inherent
right as a maiden daughter and in the absence of maiden daughter the son’s widow would have the same right as the married daughter and her son. This was a petty reform, which gave only life interest but did not bestow absolute right to property. Women could claim to become economically independent, only when absolute possession of property was given. Therefore, the earliest opportunity should be availed of by the Central Legislature or by the Provincial Legislatures to bring about adequate legislation. For that purpose an independent legal committee consisting of experts and eminent lawyers should sit and examine exhaustively the whole range of the Hindu Law with a view to bring about this statutory reform.

Prior to the Hindu Women’s Right to Property Act, 1937 as also amended by the Act IX of 1938, on the death of a Hindu man without male issue and without leaving a widow, his daughter and failing her or after her, her son would succeed to the estate. But now by reason of the introduction of new heirs between the widow and the daughter namely, the daughter-in-law and the grand-daughter, the right of succession of the daughter and the daughter’s son is postponed till after the death of the daughter-in-law and the grand-daughter-in-law. Thus, so long as any of the heirs mentioned in above Act is alive, the estate must go to him or her and still all such heirs’ die, the daughter’s chance of succeeding to the property is postponed. This postponement of the daughter’s right to inherit her father’s property is opposed to all texts of the Hindu Law and also opposed to the daughter’s rights in other systems of Law like the Marumakkathayam Law, the Christian Law etc. Preferment of the daughter-in-law to the daughter also appears to be inequitable. Hence, to restore the daughter to the position which she had occupied from time immemorial is fair and just.

The Law as already enacted leaves so many points for judicial reconstruction of the Law on such important topics as rights of management, liability for debts,
benefits of survivorship, effects of participation, rules of inheritance to be applied with reference to the interest taken by widows and son’s widow in Mitakshara joint-family properties, and even as to the precise circumstances in which the son’s widow would get the right to property (whether for instance, she would get the right when there is no widow and sons), and here is a fresh attempt further to amend the law, without making any provision for the solution of those questions either with reference to old or new class of heirs introduced.

The assumptions made in the proposed addition as to the existing law would seem to be inaccurate with reference to many of the Provinces.\(^76\)

(i) that daughters without sons do not inherit

(ii) that daughters take a limited estates

(iii) that grand-sons share per stripes.

The rules of the Hindu Law as to inheritance and maintenance, and as to enjoyment of joint-family supplemented each other and presented a comprehensive and equitable scheme. Tinkering with it, without making corresponding changes in other rules is likely to lead to great hardship in actual life, therefore, which opposed to all further interference with the Hindu Law of Inheritance and joint-family.

There is one eventuality in which an alteration of the rule somewhat on the lines proposed would be called for – that is, if the rule originally enacted is to be interpreted as giving the son’s widow right of inheritance even though there is no co-existing widow, or son or son’s son. There is no special reason why the son’s widow would take the property to the exclusion of the daughters. The daughters may come in with the widows in that event in the order in which they come under the Hindu Law, and after them, their sons may come.

\(^{76}\) Memorandum No.36236, G-2 Home, dated., 30-10-1939
This Bill is subject to the criticism which is being now commonly levelled against piecemeal legislation in matter affecting succession and intensifying the case for coordinated and considered amendment to the Hindu Women’s right in succession, in property and in other matters.

This Act not merely created for the first time a right of succession in a specific class of cases, viz., son’s widow, son’s son’s widow and son’s great-grand son’s widow but, went further against all accepted notions of the Hindu Law and the Hindu sentiment, and gave these new heirs a precedence over daughters and other preferential heirs. This was keenly resented by the public.

This amendment which is intended to remove the injustice done by the former legislation has not come too soon. Thus, the words “exists with one or more maiden daughters” of heir’s or of the propensities. Again the words “if there is no maiden daughter but one or more married daughters having son or sons” suffer from the same ambiguity which persists in the 3rd category cases.

It is considered by two of the Honourable Judges that the exclusion of the daughter in favour of the widow of a pre-deceased son or of a pre-deceased son of a pre-deceased son in the order of succession in the Hindu Law under the provisions of the Act XVIII of 1937 was deliberate, and was warranted by public opinion among the Hindu community and, that being the case, it is difficult to understand why in less than 2 years an attempt should be made to ‘restore’ the daughter to her previous rank before the widow of a pre-deceased son etc. It is not even a mere ‘restoration’, for the 2nd proviso to clause 2 (a) of the Bill appears to be a sort of compromise between the claims of a daughter, and those of the newly introduced heirs who superseded her under the Act. Their Lordships (Judges) were of the opinion that the Hindu community have scarcely had time to assimilate the
revolutionary provisions of the Act of 1937, and that the present Bill will only add to the uncertainty and confusion existing in the present position. In matter like inheritance and succession, certainty and stability are considered to be far more important than abstract or theoretical notions of equitable distribution of a deceased person’s estate, which must largely be subjective.

Some of the Honourable Judges have also taken the view that under the Government of India Act, 1935 “intestacy and succession” as regards agricultural land which is by far the largest proportion of land in India is excluded from the concurrent Legislative List, and “devolution of agricultural land” is included in the Provincial Legislative List.\(^77\)

In the statement of objects and reason it is stated that the object of the Amendment Bill is to give to a daughter that right of inheritance to which she is entitled. Both under the Mitakshara as well as under the Dayabhaga Laws, the daughter is the heir in the absence of son, son’s son or son’s grand-son and widow. That is so even in Bombay though there is this difference in Bombay that she takes an absolute estate on certain conditions. The nature of such a right inherited is not sought to be amended by this Bill, for it is provided that the inheritance is subject to the limitations and in the order provided by the Hindu Law in this behalf. Therefore, there is no need for this Bill merely to give the daughter a right of inheritance.

It limits the daughter’s right, for it makes the widow of son, son’s son and son’s grand-son a joint heir along with the daughter in certain circumstances. In none of the schools except in Bombay was the son’s widow or the son’s son’s widow or son’s grand-son’s widow an heir, and it is only by the Hindu Women’s Right to Property Act of 1937 that such a right was given to the son’s widow as also

---

77. Paras Diwan., *The Legal Position of Mother in Modern Hindu Law*, p.62
to son’s son’s widow to inherit along with the son and son’s son in the case of Hindus governed by the Dayabhaga School of Law who died intestate, and in the case of Hindus governed by other Schools of Law dying intestate with separate properties, and under this Bill, son’s grand-son’s widow also is enabled to inherit her husband’s property. 78

Law is nothing but the expression of the will of the people. It was only under the Act of 1937 that the son’s widow and son’s son’s widow were made heirs entitled to inherit the properties along with the sons and son’s son. It was hardly two years since Act 18 of 1937 was passed and how far it had been relished by the Hindus, the majority of whom might not have, even known about the existence of such a law, it is difficult to state.

As pointed out above, the Bill curtails the daughter’s right of inheritance by making her share the estate along with others instead of giving any right which she has not already got. This is too drastic a measure, and it was not advisable to introduce such a restriction till it is known how far the Act 18 of 1937 with regard to the provision for inheritance by son’s widow and son’s son’s widow had been appreciated by the Hindu public.

The Dhayabhaga Law which is sought to be made universal is certainly not based on equity or justice and in practice, it leads to several anomalies which can have no rational basis. The general principle of the Hindu Law is that property once vested cannot be divested. A maiden daughter who inherits her father’s property would continue to hold it even if she is married subsequently. Therefore she gets an advantage over her married sister. She also gets advantage over her widowed sister without a child who might have been married into a very poor family. There can be

no equity or justice when the devolution of property among daughters is made to depend upon fortuitous circumstances like having a male issue or being unmarried at the time of her father’s death.

The proposed amendments, were far from improving the existing law in Madras, seeks to introduce innovations which are not based on legal principle. The object of the Bill can be secured best by treating all daughters, maidens or married, with or without issues and giving them equal interest in their father’s property. This would on the whole be more equitable in practice than the Mitakshara Law and certainly more just than the Dayabhaga doctrine or religious efficacy.

In the Judges Order in Partition Case was a woman’s claim to property. It was on the applicability of the New Act, a woman was claiming ¼ of her deceased husband’s properties belonging to the joint-family of her husband’s (and dependants) by virtue of the Hindu Women’s Right to Property Act of 1937. Krishna Rao, District Judge, East Godavari, held that the Indian Legislature had no power to make laws for a Province regarding succession to agricultural land after April 14, 1937.79

The result was that the Indian Legislature had no powers to make laws for a province regarding succession to agricultural land after 14, April 1937. The Hindu Women’s Right to Property Act though passed by 2 chambers prior to 1 April 1937, was a law made on April 14, 1937, because it was only on that day that the legislative process was completed by the assent of His Excellency the Governor General.

79. *The Hindu*, dated, 3-10-1938, p.2
The Madras Hindu Women’s Right to Property (Extension to Agricultural Land) Act of 1947 was an improvement to the Central Act of 1937, and by this the widows of the deceased persons were entitled to get a share even from the property of agricultural lands and residential house.

Meanwhile in a federal court judgment the Hindu Women’s Right to Property had been interpreted to exclude agricultural lands because at the time where the Act was passed by the Central Assembly, the Government of India Act of 1935 came into force, and according to that Act, legislations affecting agricultural land became a Provincial subject. Consequently, the scope of the Hindu Women’s Right to Property Act 1937 did not extend to the succession of agricultural lands. Wives had always been free to administer their own stridhan as property and their Hindu Women Right to Property Act 1937 strengthened their position.

On account of the judgment of federal court several complications arose and those women who had secured agricultural lands by the liberal interpretation of the word, ‘property’ were in the danger of loosing them. It is in this connection we would like to refer two important Bills. During the early part of 1942 the Hindu Law Committee drafted the following two Bills: 80

1. A Bill to amend and codify the Hindu laws to intestate successions;

2. A Bill to codify the Hindu Law relating to marriages.

The intestate succession Bill stated that the property on death of a person should go to widow, sons and daughters, all of them taken together so that the daughter should get half of the share of the son. The drafted Bill to a notable extent would be useful in rectifying the injustice done to the daughters in the previous

---

legislation. Again the same inter-state succession Bill had the power to modify the provisions relating to women’s estates.

According to the existing law, the inheritance of a women’s estate provides only a right to the widow to use the income from the property for her maintenance only and on her death it would go to her husband’s heir. This was a great injustice done to women in the Act of 1937. Hence, the proposed Draft Bill would insist on absolute right to widow over her property and entitled as if she were a male as far as the property is concerned over which she had limited right in the past.

In June 1942, the AIWC, Madras Branch, passed resolutions appreciating the work done by the committee and requested the government to nominate at least one woman to the Central Legislative Assembly for the period of discussion of these Bills, and all the branches of AIWC met the Honourable Law Member and other Members of the Viceroy’s Executive Council and requested them to introduce the Bill in the Budget session of the assembly to be held from January to April 1943. They also sent a panel of names, including Renuka Roy, to be nominated to the Central Assembly and Government was pleased to nominate her since she had performed remarkable work in the Assembly in enacting legislations for the welfare of women. During the time of discussion of the Bill in the Assembly, members sent telegrams in support of the Bill to the Law Minister and did considerable amount of canvassing among the members of the Assembly to support the Bill. But the orthodox sections opposed Bills by stating that a daughter should not get even half of the share of a son on the ground that the family property would be disintegrated, and that a widow should not be given an ‘absolute estate’ because, if remarried the property would go to another family.
The Congress members in the Assembly gave their full support to the Bill on the ground that the election manifesto of the Congress had included equal rights for men and women, and they pledged to it. Radha Bai Subbarayan, elected member from Madras, supported the Bill, emphatically, but the opposition was trying hard and already succeeded to some extent in getting support of the Hindu women who were ignorant and who did not understand the provisions of the Bill by saying that the Hindu Society is in danger. It was indeed, a peculiar propaganda and a proof to the existence of the forces that were against social changes that would benefit women.

The Bill was referred to a Select Committee, which met in May 1943 at Simla and submitted a report. The main changes included by the Committee were in clause 5 of the Bill; the parents, if depended upon the inter-state owner and the widowed daughter-in-law had been included among the simultaneous heirs, and along with the widow the sons and daughters had been allotted specific shares in the property inherited and for maintenance.

In Clause 13 in the devolution of ‘stridhana,’ the sons and daughters had been given simultaneous rights. In the property of father, and daughter could get half of the share of the son, so in the mother’s ‘stridhana’. In their report, among other things, the Committee recommended for immediate enactment in several of the provinces of complementary legislation, and legislations extending Deshmukh’s Act to Agricultural lands. Madras Government postponed taking action owing to certain technical difficulties.

Finally, in Nov.1946, the Madras Government published a Bill extending the operation of the Hindu Women’s Right to Property Act of 1937, and the Hindu Women’s Right to Property Amendment Act 1938 to Agricultural Lands in the
province of Madras. By passing of this Act the object of the 1937 Act was fully achieved. The long struggle of the women of the province was graciously rewarded. We would like to add here that some measures had already been passed due to G.V. Deshmukh’s efforts in respect of women’s right to property; particularly of widows in the Hindu society. Their position improved when the widow got a right in her husband’s property.

The laws of inheritance and marriage in the Hindu society had been fixed and rigid. The stage was now set for the government to come forward to undertake legislation for improvement of the Hindu Women’s social and legal status. The government appointed the Hindu Women’s Rights Committee consisting of B.N. Rau, D.N. Mitterand and Principal T.R. Gharpure of Poona Law College to examine the whole matter and to make recommendations, which would help the legislature to pass an Act that would cover the whole of India.

Accordingly, the Hindu Bill on marriage and interstate succession was introduced in the Central Legislative Assembly on 23rd March 1943. Renuka Ray was nominated as a member of the Central Legislative Assembly as a representative of AIWC for participation on the discussion regarding the Hindu Code Bill.

A campaign for the Uniform Civil Code for women was undertaken by the AIWC and other leading organizations in the thirties. An insistent demand for changes were in the Hindu law in support of women’s rights. Consequently, the government had to appoint the Hindu Law Committee under the Chairmanship of B.N. Rau, Sultan Ahmad, the then law member took interest in the matter. Their labours resulted in the introduction of the Bills on Hindu marriage and Hindu intestate succession in Central Legislature in March 1943. Six associations of

81. Ibid.,
82. Sangh Mittra and Bachchan Kurein, *Encyclopaedia of Women in South Asia*, p.404
women wanted these bills to be passed. But, the majority of the Hindus were not only willing to support the Bills but they would also go much further. M.R. Jayakar was looking forward to the day when there would be legislation for all women of India, because religion had little to do with the property rights.

We have to recall here the past events in order to establish the importance of the Bills. Referring to the Bill sought to be introduced by Harbilas Sarda in the Legislative Assembly in 1932, for securing a right to Hindu widows over the property belonging to their husbands, having been opposed even by the government on the ground that the three Hindu members who took part in the debate on the motion were against it, and the Dravidan which carried the views of EVR Periyar observed: “the objection of the government to this Bill has no doubt caused much dissatisfaction to all persons. It is indeed regrettable that, while the Government should help the progress of the country by accepting at least Bills introduced in the Legislative Assembly, for effecting social reforms, though they do not grant all facilities for such reforms at least they should not have opposed the Bill while sympathizing with its object in words”.84

In 1937, the Government of India passed the Hindu Women’s Right to Property Act in the Legislative Assembly. EVR Periyar commended this act in the editorial of Kudiarasu: “The Bill that was forwarded by Bhagwan Das at last put into an Act against strict orthodox opposition and at least it has established the necessity of the Hindu Women’s Right to Property on a firm ground”.85

The Hindu Women’s Right to Property of 1937 inoperative and inapplicable to agricultural lands in the various provinces. Stripped of its technicalities, the decision takes away with one hand what has been given by the other to the women of this country. It becomes a necessity to mention here that our country is primarily

83. Ibid., p.405
84. M.D. Gopalakrishnan, A Garland to Periyar p.68
85. Letter No.295, 19th Jan. 1939, Home Department, p.7
rich in its agricultural production and consequently most of the people have the bulk of wealth in the form of agricultural lands.\textsuperscript{86}

The intention of the Act XVIII was to minimize the hardship which our Hindu women were suffering from after the death of their husbands and to give them some means of sustenance during their lives. The decision in essence leaves the young and old widows in the country to suffer from the very economic troubles which was intended to be averted by the Act.

The Act of XVIII of 1937 made the agricultural lands also divisible among the widows, as originally intended by the Act.\textsuperscript{87} The implementation of the right to other property like a residential house and agricultural lands was even more difficult to achieve except in families where there was plenty for everyone.\textsuperscript{88}

The diversities of customs, the prevalence of various schools of law which operated with regard to the Hindu succession, marriage and inheritance, the difficulties which the court felt in giving a uniform interpretation to these and the changing character of economy, administration and ideology, created a necessity for a uniformly worded Hindu Law. Accordingly a Committee was appointed in 1941, popularly known as, Rau Committee. But the proposals of that Committee were kept in cold storage by the then functioning British Government. After the World War II and with the advent of the Indian Independence the Indian Parliament again took up the problem of codifying the Hindu Law.

Hence, the Hindu Law Reforms Committee was appointed to study the problem in depth and make recommendations as to the steps to be adopted for amending the Hindu Law with a view to conferring more rights on the Hindu women in the spheres of matrimony and property.

\textsuperscript{86} Memorandum No.35007, dated, 14\textsuperscript{th} October 1938, Home Department, p.1
\textsuperscript{87} Ibid.
\textsuperscript{88} J.P.Atray, Crimes Against Women, p.240
In 1941, following several non-official Bills in the Central Assembly to improve the status of women in the matter of property rights, and for giving the daughter a right to inheritance, the Government of India appointed a Committee, with B.N. Rau as Chairman, to examine the Hindu Women’s Rights to Property Act, 1937 and to remove any injustice to the daughter in existing law. 89

It was against this background that the government accepted the recommendation for codifying the Hindu law and introduced, as a first step, a Bill on Intestate Succession, prepared by the Committee, in the Legislative Assembly in 1942. A joint-committee of this House suggested that the Rau Committee draft a comprehensive Hindu Code of Law. Thus, the Rau Committee’s Hindu Code was drafted in 1947. In 1948, a Select Committee of the Provisional Parliament considered this code, but could not get it passed during its lifetime. After the first Parliament was elected, it was decided to get the code through in part. At last the various sections of the code were separately passed into law.

When the first draft was presented in the Parliament, Pandit Nehru categorically declared that his government would either stand or fall on the success or failure of the Bill. But somehow under the pressure of the orthodox sections of the Congress party and due to the approaching first general elections the discussion on the Bill was postponed. After the elections, with the Congress party in power the Bill again came for discussion in 1954 and it was decided at that time to split up the whole Hindu Code into three parts viz. the Bill regarding the Hindu Marriage and Divorce, the Bill regarding the Hindu Succession and that with regard to Adoption.

The Hindu Law was uncodified in a large measure, though certain branches of it were the subject of legislative intervention viz., the Hindu Women’s Right to Property Act, 1937. Scattered to innumerable decisions of the Indian High Courts, and also of the Privy Council, it was a source of legislation and therefore, it was

89. Tara Ali Baig, Women of India, p.73
necessary to give a definite shape and form to the Hindu Law by consolidation and codification. The principles of codification covered (i) right to property (ii) order of succession to the property (iii) maintenance, marriage, divorce, adoption, minority and guardianship.  

Though the proposal for consolidation and codification of the Hindu Law passed through opposition, eventually it came to be approved and applauded. This was possible because, there was sustained attempt to educate public opinion and to ameliorate the condition of women. Due to the extensive propaganda by the All India Women’s Conference and the cooperation of men like C.D.Deshmukh, the Hindu Women’s Right to Property Act of 1937 was enacted to give better rights to women. It extended to the whole of India except part B States. It was applicable in the case of a Hindu dying intestate. Later the Hindu Succession Act of 1956, a landmark in the history of the Hindu Law regulated succession and inheritance among the Hindus and made women the owners of property.

As under the present Hindu law, very few women can inherit property in their own rights, therefore, the question of women’s representation on the legislative bodies cannot be solved here simply by inserting in the proposed Fundamental Rights, the words, “equal rights and obligation of all citizens without any bar on account of sex”, unless we give some assurance that the present Hindu law of Inheritance would be amended so as to include the equitable rights of women therein.

The recommendations of the Hindu Law Reform Committee were considered by the Government of India, and ultimately a various branches of the Hindu law were published by B.R.Ambedkar, who was the Law Minister to the Government of India. The Hindu Code Bill created a vigorous controversy in the country. For, it

91. Ibid.,
provided inter alia for compulsory monogamy through out India for the Hindus, for divorce, for abolition of Mitakshara coparcener for rights of succession to widows, daughters, widowed daughter-in-law etc., for absolute right to property for all Hindu women. The then President of India Rajendra Prasad had himself strong reservations on the Hindu Code Bill. The cumulative effect was that the Hindu Code Bill lapsed on the dissolution of the Provisional Parliament in 1952. But this led to passing of many Acts, including the Hindu Succession Act, of 1956.