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“CRITICAL ANALYSIS ON THE INTRODUCTION AND EFFECTS OF HINDU CODE BILL IN INDIA”

AUTHORED BY - SARTHAK BOBADE

ABSTRACT

The Hindu Code Bill, which during the recent Indian election became a controversial issue between Prime Minister Nehru and certain conservative Hindu elements, still awaits passage by the Indian Parliament. The object of the bill, which has been years in preparation, is to unify, codify, and modernize the laws governing marriage, divorce, inheritance, property rights, and allied topics for Hindus, who form the great majority of the population of the Indian Republic. The word "Hindu" is of foreign origin and inexact in its meaning. The proposed bill applies to adherents of the Hindu faith and also to Sikhs, Jains, Lingayats, and Buddhists, all religions allied historically to Hinduism. It applies, in fact, to all citizens of India except Muslims, Parsis, Christians, and Jews.

The keen interests of Hindus, and particularly of Hindu women, in the proposed Hindu Code Bill, which touches so closely their personal affairs, is paralleled by the close attention which outside observers are devoting to this experiment in codification. Students of jurisprudence have seen resemblances to the famous codification of French law in the early nineteenth century, and to Egypt's recent codification of Islamic law. It is fairly certain that India's new code, if and when it is finally passed, will be a modern interpretation of classical Indian religious law and local custom, with strong traces of English common law.

The Hindu Code Bill has been criticized, even by progressives who otherwise favor it, on the ground that the same laws should apply to all citizens regardless of religion. In reply, it is said that since much of the traditional customary law has a religious basis, the same code cannot be imposed on all sects without violating the constitutional guarantee of religious freedom. Actually, many communities which have adopted some other religion still follow the old Hindu laws and customs in non-religious matters, so that the practical difficulties of applying a uniform code have perhaps been exaggerate.

In this research paper, we'll discuss all easy aspects of the Hindu Code Bill from its formation and enacting to its impacts on the society as well.

LITERATURE REVIEW

1. **"Hindu Code Bill: A Study in Social Engineering" by Granville Austin**

"Hindu Code Bill: A Study in Social Engineering" by Granville Austin is a research paper that provides a detailed historical analysis of the Hindu Code Bill and its impact on Indian society. The paper discusses the political and social context in which the Bill was introduced, the debates surrounding it, and the various provisions of the Bill. The author argues that the Bill was a significant step towards the modernization of Hindu law and the empowerment of women in India.

The paper argues that the Hindu Code Bill was a landmark piece of legislation that contributed to the modernization of Hindu law and the empowerment of women in India. The Bill, while not perfect, represented a significant step towards greater social justice and equality in Indian society.

2. **"The Hindu Code Bill: A Feminist Perspective" by Leela Dube**

"The Hindu Code Bill: A Feminist Perspective" by Leela Dube is a research paper that provides a feminist perspective on the Hindu Code Bill, which was a series of laws passed in India in the 1950s that aimed to reform and codify Hindu personal law. The paper argues that while the Hindu Code Bill was a significant step towards gender equality, it did not go far enough in addressing the structural inequalities that women faced in Indian society.

The paper argues that while the Hindu Code Bill was an important piece of legislation that contributed to the empowerment of women in India, it did not go far enough in addressing the structural inequalities that women faced in Indian society. The author calls for a continued feminist engagement with the law, and for further reforms that address the root causes of gender inequality in India.

3. **"The Hindu Code Bill: A Critical Assessment" by Upendra Baxi**

"The Hindu Code Bill: A Critical Assessment" by Upendra Baxi is a research paper that critically evaluates the Hindu Code Bill, which was a series of laws passed in India in the

1950s that aimed to reform and codify Hindu personal law. The paper argues that while the Bill represented a significant step towards modernization and gender justice, it also had certain limitations and shortcomings that needed to be addressed.

The paper argues that while the Hindu Code Bill was a significant step towards modernization and gender justice, it also had certain limitations and shortcomings that needed to be addressed. The author calls for a continued engagement with the law, and for further reforms that address the root causes of gender inequality in India, such as caste and class barriers.

BACKGROUND OF THE HINDU CODE BILL

In the Vedic age, women participated in religious rites and could officiate as priests. It was customary in ancient times for writers, painters and sculptors to remain anonymous and to ascribe their work to mythical personages; thus, though the names of a few women artists are known, there are indications to suggest that their numbers were in fact much larger. Women mathematicians, philosophers and civil administrators are among the nation's illustrious ancestors whose names are household words and are recited in drama and song throughout the villages of India. It is a generally accepted fact that women once participated in public life and enjoyed a position of social equality with men. Their spiritual disfranchisement came at the time of Manu, the law-giver who placed a taboo upon the participation of women in the Upanayan (or sacred thread) ceremony. Since religion was the basis of society, this prohibition had a tremendous effect upon the status of women in other respects as well, and from that time onwards they gradually lost their position in society. Because property and inheritance rights were bound up with religion, women's prerogatives suffered in this field also. The daughter was the first sufferer, her right of inheritance to her father's property being abolished. As women's position in society worsened, the process found reflection in the laws.

Under British law, women were not allowed to own property until the 19th century, when the Married Women's Property Act was passed, although women never lost their right to do so under Hindu law. The concept of stridhan or women's property, although increasingly limited over the centuries, never completely disappeared. With the advent of British rule, certain property rights of women were further restricted when backward pandhs and priests provided interpreters and translators for British magistrates. At the same time, the term "widow's property" was born, which

allowed a woman to keep the property inherited from her husband during her lifetime, but not to give it away. The marriage law also gradually deviated from the previous equal treatment of men and women. Hindu law allowed polygamy only in cases where the woman proved sterile; that exception later was interpreted to include women who did not have the disease of the husband. Over time, child marriage became common, widows were forbidden to remarry, the dowry system spread, and as a result the marriage law lost any semblance of equal rights.

Some argue that Hindu marriage was a sacrament and therefore divorce or dissolution of marriage was unknown in Hindu law. However, a well-known text of the ancient lawgiver Narada clearly states that divorce must be allowed under certain conditions. In other words, Hindu law has varied at different times due to the multiplicity of interpretations given to it, so that reformers on the one hand and staunch conservatives on the other can refer to opposing texts, as they often do, to support their specific arguments. Furthermore, Hindu law varied not only over time but also between different classes and regions. It is not uniform across India. There are mainly two legal orders, Dayabhaga and Mitakshara, and even these have their own subdivisions. Along with these is the matriarchal system which flourished in the pre-agricultural era and still continues in Malabar and certain other parts of the country. In the legal systems of Aliyasantana and Marumakkattayam, which are essentially matriarchal, women have not only equal but more complete rights than men. There is also a difference between the Brahmanical Hindu marriage law that governs the so-called upper classes of society, and the marriage laws followed by the lower classes, where customary divorce is recognized and always has been, and where the laws in question are more equality to women. The custom of dowry, which still prevails among the upper and middle classes, obliging the bride to inherit the marriage, is completely reversed in the lower classes, where the bridegroom must pay a dowry to receive his bride. There are even differences in the laws governing the higher classes. Thus in Bombay, under the Mayuk school of law, the daughter's right of inheritance remains intact, while in Bengal the widow's right to her husband's property was limited only after the beginning of British rule.

Custom, even more than law, harmed the cause of women. Customs changes are happening very fast in India these days. Early marriage was banned by the Child Marriage Restriction Act of 1929. The purdah system, which was all the rage in Muslim times and denies women opportunities for social interaction, was abandoned by Hindus and is largely dying out among Muslims as well. The Hindu joint family system once provided social security for the elderly, the

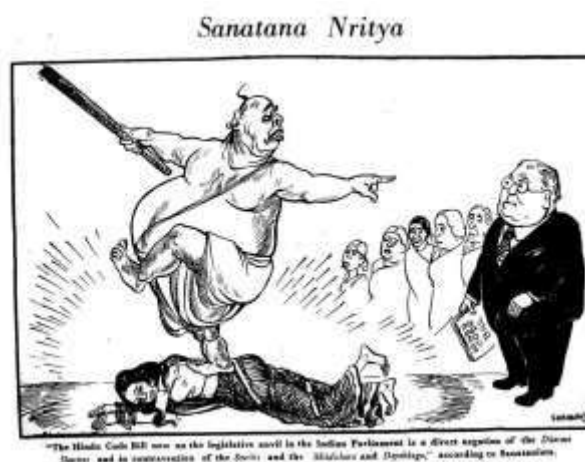
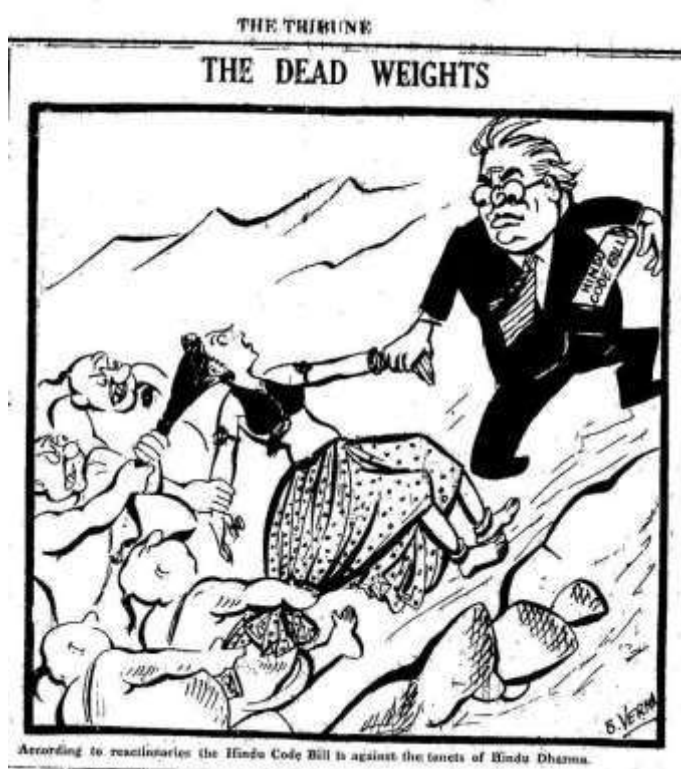
disabled and the sick. Later, it became a serious obstacle to the advancement of women, because it tied them to domestic responsibilities and denied them the opportunity to freely participate in the social life of the community. This system is also fast disappearing due to current social and economic forces. The first progress was seen in the middle of the 19th century, with the appearance of the great pioneer and social reformer Raja Ram Mohan Roy, who almost single-handedly championed the issue of women's rights and social reform. At that time, sati was practiced in some parts of the country (a widow burned on her husband's burial site). Sati was brought to India through Scythian influence and was initially confined to the Rajputs, the famous warrior class of Rajasthan, but later spread more widely. Thanks to the efforts of Raja Ram Mohan Roy, who fought against great odds, a law was passed prohibiting this custom. Pandit Ishwar Chandar Vidyasagar was another important reformer who argued that ancient Hindu scriptures accepted widow remarriage and whose efforts led to the passing of the Widow Remarriage Act in the late 19th century. At the turn of the century, progressive Hindu groups such as the Brahmo Samaj and the Arya Samaj, whose reforms were endorsed in the Vedas and Upanishads, broke many backward customs by helping their female members enjoy education and opportunities for self-expression helped them take their place among the world's most progressive women. The liberating influence of the great Tagore family, which produced several pioneering female reformers, was gradually felt throughout the country. Later came figures like Hari Singh Gour, Dr. Deshmukh and Rai Haribilas Sarada who were responsible for passing bills in the central parliament which removed some of the grosser injustices. However, serious obstacles remained as the British government followed a policy of non-interference in the religious and social affairs of the colonists and was therefore unwilling to take reform initiatives.

The most momentous change in the position of women in India was due to the efforts of Mahatma Gandhi, who, in launching his campaign of non-violent non-cooperation in the struggle for Indian freedom, ignored both law and custom by specifically calling upon women to participate. They left the seclusion of their homes and, courting imprisonment came forward to help in every emergency that faced the country. No legislation could have been more sweeping or more effective than the Mahatma's call, which leveled the barriers of established custom almost overnight. Thus, the non-cooperation movement for national independence brought the emancipation of women in its wake. Thenceforth women in ever larger numbers became increasingly active not only in the freedom movement but also in various fields of social service.

ROLE OF DR. BHIM RAO AMBEDKAR IN THE MAKING

“No law passed by the Indian Legislature in the past or likely to be passed in the future can be compared to it (Hindu Code) in point of its significance. To leave inequality between class and class, between sex and sex which is the soul of Hindu society, untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code.”

—Dr. Ambedkar on ‘Hindu Code’



After India's independence in 1947, the postcolonial government led by Prime Minister Jawaharlal Nehru completed the codification and reform of Hindu personal law, a process started by the British. According to the British policy of non-

interference, reform of personal law should have arisen from a demand from the Hindu community. This was not the case, as there was significant opposition from various leading Hindu politicians, organizations and devotees who saw themselves unjustly singled out as the sole religious community whose laws were to be reformed. However, the Nehru administration saw such codification as necessary in order to unify the Hindu community, which ideally would be a first step towards unifying the nation. They succeeded in passing four Hindu code bills in 1955–56: the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act. These continue to be controversial to the present day among women's, religious, and nationalist groups.



Dr. Ambedkar, however, was in a position to make a strong impact on the making of the Constitution after he was appointed president of the “Drafting Committee”. While This Committee, was not responsible for drafting the primary texts, had the essential function to get these into shape on the basis of articles proposed by other, issue-based, Committees, before submitting them to the Constituent Assembly. The Assembly made several readings and, each time, Drafting Committee members and most often its chairman, Dr. Ambedkar guided and channelized the discussion. In addition, he was one of the few members of the Constituent Assembly who belonged, besides the Drafting Committee, at the same time,

to more than one of the 15 Committees including the Minorities Committee where safeguards for the Dalits were discussed.

In the Constituent Assembly, Dr. Ambedkar defended the values and political models in which he had been immersed since his youth when he studied in the United States and England. This brought him closer to Nehru but led him to adopt Gandhian positions. Like Nehru, Ambedkar believed in parliamentary democracy. He also faced criticism from the left who wanted to classify the Republic of India as "socialist" from the first article of the constitution. According to him, this would contribute to "simply destroying democracy", because the task of the government, appointed by the people, was to choose the best form of social organization, as he explained on 19th November 1948. Another sign of his commitment to the values of liberal democracy was when he proposed to change the strict separation of executive and judicial powers. Some representatives opposed this in the name of state power, arguing that too strict legal control would undermine it. Nehru participated in this discussion, although his responsibilities as Prime Minister did not allow him much time as he wanted to support Dr. Ambedkar's revision. It was accepted and became Article 50 of the Directive Principles. Later, Ambedkar advocated the establishment of a British legal system. According to him, the division of power would in no way weaken the country. Dr. Ambedkar, on the contrary, advocated a strong center on the grounds that excessive federalism would prevent uniform application of the Constitution throughout India. For example, he argued that the immunity clause would not be applied uniformly if states had too much

autonomy. This possibility of centralization naturally offended Gandhi's supporters, who always seemed very interested in decentralizing power down to the village level. In a sense, Ambedkar posthumously avenged the Mahatma in the Constituent Assembly because he managed to sideline or at least weaken the influence of the more radical Gandhians on Panchayati Raj, cow protection, etc. While none of the articles in that text abolished castes, discrimination based on creed, race, caste, sex and place of birth was prohibited because equality was paramount, which was to become Article 15 of the 1950 constitution. It also prohibited all restrictions based on the same criteria on shops, restaurants, hotels, public places for leisure, wells, streets and other public places receiving financial support from the state. In particular, Article 17 has lost immunity. Hard labor and all other forms of begging (forms of slavery, the first victims of which were Dalits) were prohibited under Article 23.

But Dr. Ambedkar failed to make an impact in one of his main areas, which is personal laws are a key area of social reform. During the debates in the Constituent Assembly, he showed his willingness to reform Indian society by advocating the adoption of a Western civil code. He then confronted those representatives who wanted to preserve personal laws, especially Muslim representatives who seemed very worried about the fate of Sharia law. As a result, Dr. Ambedkar got nothing but an article in the Directive Principles which says, "The State shall endeavor to secure to the citizens a uniform civil code throughout the territory of India." After the promulgation of the Constitution, Dr. Ambedkar supported the reform of Hindu personal law. He wanted to implement in a revised form the Hindu Code Bill which the British gradually developed. With over a century of legislation from the abolition of Sati (1829) to the Hindu Women's Property Act (1937), they decided in the 1940s to consolidate the reformed Hindu Personal Law into a single code. Among its most important provisions was the fact that daughters received a share of the inheritance with sons after the death of their parents, widows received absolute property, monogamy was the rule of law, and divorce was allowed under certain conditions. The code was introduced in the parliament in April 1956, but the political conditions of independence and partition prevented that body from discussing the text. In 1956, Nehru entrusted the drafting of a new code to a sub-committee of the General Assembly and appointed Dr. Ambedkar as its head. In the latter are written such important principles as the equality of men and women in matters of property and adoption, the granting of legal status only to monogamous marriage, the elimination of the "caste conflict of civil marriage" and the need for concrete justification. application for divorce, a procedure that until now was too common incases

where her husband refused her. The questioning of practices governing Hindu privacy created a deep feeling not only among the traditional parties of the Hindu Mahasabha, but also among Congress leaders, including Rajendra Prasad, who as President of the Constituent Assembly became the first President of the United States. Republic of India Many other Congress leaders, including party president Pattabhi Sita Ramayyan, opposed the bill, after all, it could not have been passed before 1951-52. general election to alienate local conservative landowners. Jawaharlal Nehru subscribed to this code where he saw Dr. Ambedkar as one of the cornerstones of the modernization of India. He even announced that his government would resign if the bill was not passed. Dr. Ambedkar pressed him to present it to the Parliament as soon as possible. The prime minister asked for his patience and divided the code into four subgroups to dissolve the opposition before presenting it to the Assembly on 17 September 1951. The ensuing debate confirmed the hostility of the more traditional congressmen at the time. Finally, These laws are as follows.

Laws related to Dowry, Marriage and divorce Caste Disabilities Removal which later on became the Caste Disabilities Removal Act, 1850

1. CONVERTS MARRIAGE ACT, 1866,
2. The special Marriage Act, 1872,
3. The child marriage Restraint Act 1929 (Known as sharda Act)
4. Hindu Marriage Act 1945
5. Hindu Marriage (Removal of Disabilities) Act 1946
6. Hindu Marriage Act 1955
7. The Indian divorce Act 1955
8. The Hindu widows : Remarriage Act 1856
9. Dowry prohibition Act 1961
10. Prohibition of Child Marriage Act 2006

Laws related to right to property Act

1. The Hindu Inheritance (Removal of Disabilities) Act, 1928,
2. The Hindu Law of inheritance (Amendment) Act, 1929,
3. The Hindu Gains of Learning Act, 1930,
4. the Hindu Women's Rights to property Act, 1937,
5. Hindu Women's Right to Separate Maintenance and Residence Act, 1946,

6. Hindu Marriage (Removal of Disabilities) Act 1946.
7. The Hindu women Married women's right to separate Residence and maintenance Act 1946
8. Hindu adoption and maintenance Act 1956
9. Hindu succession Act 1956

Laws Related to protection of rights of working women

1. Factories Act 1948
2. Minimum Wages Act 1948
3. Hindu minors and guardianship Act 1956
4. The maternity benefit Act 1961
5. Equal remuneration Act 1976
6. The Factories amendment Act 1976

Hindu women's Right to property Act, 1937 was passed with a view to granting property rights to women but its repercussion on the joint family was overlooked. Hindu Society although, has advanced much beyond what it was during the period of Commentaries and Digests, yet, the development of law was thwarted. Hindu law became static and did not conform to the changed context of Hindu society. The progressive section of Hindu society always clamoured for reforms. In 1941 a Hindu Law committee was constituted which in its, report recommended that Hindu Law should be codified in gradual stages beginning with the law of intestate succession and marriage. The Government ultimately decided to split up the code and pass it in installments. The passage During Constituent Assembly Debates Dr. Gour strongly pleaded for the uniform Civil Code for the whole county in order to ameliorate the poor condition of women of every community. He wanted to provide with equal rights and status to every woman, Hindu or Muslim. Article 44 of the Constitution provides for uniforms civil code for the citizens. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. But till today a uniform civil code could not be made. The Supreme court on May 10, 1996, in its judgment asked the prime minister to take "fresh look" at Article 44 of the constitution. The court said that is was imperative both for protection of the oppressed and promotion of national unity and solidarity. Mr. Justice R.M.Sahai said in his judgement that "the Successive Governments till date have been wholly re-miss in their duty of implementing the constitutional mandate under Article 44 of the constitution and why it so. Only political leaders of this Nation knows better

than a Aam Adami or abala nari support to understand it.

This Article examines the debate about women's rights and family law reform in interwar and early independent India. Focusing on the Hindu Code bill, an attempt to reform and codified in the family law that began in 1941 and culminated in 1956, It argues that these reforms sought to alter the way in which male authority was exercised within the Hindu family but also to consolidate the power of North Indian Hindu men over other regional Hindu and Non Hindu communities. Managed through alliance between colonial rulers and local men of influence, British governance in India helped to ensure and even sharpen the hierarchical structure of patriarchal authority in India. Constitutional reform and changes in the political, economy of colonial rule after world war I began to place this hierarchical structure of power under pressure and created growing interest amongst Indian legislature and colonial officials in its reforms. Though couched in the language of women's rights reform of personal law was driven by a desire to reconfigure the balance of power within both the Hindu family and the Indian state.

On September 22, 1951, Jawaharlal Nehru, fearing a caste Hindu backlash, dropped the Hindu Code Bill. Thus was lost a golden opportunity to remove all the constraints imposed on Hindu women by the patriarchal brahminical social order based on the dictates of Manu. As is commonly known, women in Hindu society have historically been denied political social and economic rights. Brahminical texts denied women education. Sati, child marriage, widow ostracization were cunningly used to deny women their rights to property.

As free India's first Law Minister, Dr. Babasaheb Ambedkar recognized that it was his duty to free women from the clutches of Manu's laws. He drafted and introduced the Hindu Code Bill on 24 February 1949. Through this Bill, Dr. Ambedkar wanted to put an end to a variety of marriage systems prevailing in India and legalise only monogamous marriage. But most importantly, the Bill sought to confer on women the right to property. It also sought to give equality to men and women in all legal matters. But caste Hindu "leaders" and "intellectuals", not prepared to respect women as equals, opposed this Bill calling it an attack on their religion. So-called liberal Congress leaders such as Rajendra Prasad, Govind Vallabh Pant and Madan Mohan Malviya & other leaders opposed the Bill. Sarojini Naidu threatened to go on a hunger strike if the Bill was not dropped. Dr. Ambedkar was heavily criticized for standing in favour of women's rights. The orthodox elements together with "moderate" Congress leaders whipped up communal passion in the country by raising the cry of "Hinduism in Danger" in the hands of an "untouchable". A

spineless Nehru yielded to pressure and decided to drop the Bill. Dr. Ambedkar strongly backed the Bill and called on the liberal intelligentsia and the media to come forward in support of the Bill, but most failed to respond to his call unable to see beyond their caste prejudices. Hurt by the lack of commitment to positive change and Nehru's backtrack Dr. B. R. Ambedkar resigned from the Union Cabinet.

However, in his struggle for combating graded inequality Dr. Ambedkar opted a strategy to remain the part of process in reformation rather than agitating or complaining from outside. Probably, the „Hindu Code Bill“ was last an attempt of Dr. Ambedkar to reform graded inequality of Hinduism from within. Since from the beginning of his political career, Dr. Ambedkar was criticizing Hinduism for inbuilt inequality, but tried to bring reformation. There occurred the incidences where his movement had reached at crossroad and in clear conflict with two Congress leaders. First at Poona-pact with Mahatma Gandhi which ended with „Consensus compromise“, and second at „Hindu Code Bill“ with Pt. Jawaharlal Nehru which ended with „fractured faith“ of Dr. Ambedkar. Further the current article attempts to provide a historical perspective to the evolution of Hindu law. It annotates the dynamic interaction among a wide variety of social forces that created the historical context to the Hindu Code Bill controversy. It shows that the Hindu Code Bill was shaped by a constellation of forces such as growth of the women's movement, necessities of the nationalist struggle, and the need for legal reforms in the first half of the twentieth century. The chapter records the efforts of the women's movement in India, the attainment of women's franchise, and the influence exerted by the intensification of the Indian national movement that forced women to come out of their domestic confines and joined their male compatriots. Thus internal inconsistencies within the legal system coupled with external realities necessitated modification of the laws relating to women since the 1920s.

Discussing about the specific stages of evolution of the Hindu Code Bill and provides the base for understanding the ideological underpinnings of the discourse over the Hindu Code Bill during 1941 to 1946. The chapter traces the process of codification of Hindu laws since the 1920s, immediately after the Montague Chelmsford reforms. It discusses the debate over Hindu legislative reforms in the 1920s and 1930s and also the growing social discontent over the Hindu Women's Right to Property Act of 1937 that led to the constitution of the Hindu Law Committee in 1941. The chapter also discusses the recommendations of the first Hindu Law Committee, the reconstitution of the Committee in 1944 with the mandate to frame a Bill to codify Hindu law.

Also, the contribution of the Hindu Code Bill in the construction of the modern Indian nation. Contrary to the existing perception that the Hindu Code Bill in its diluted form failed to create a significant impact on modern Indian society, the analysis tries to capture the lasting imprints of the Hindu Code Bill on the modern Indian mind. With the help of theoretical tools and empirical analysis, the section locates the significance of the Hindu Code Bill controversy in independent India. It attempts to demonstrate that not only did the Hindu Code Bill provide the benchmark for the second wave of feminist activism in India in the 1970s and 1980s, it also shaped much of the subsequent legal debates surrounding the proper implementation of Hindu laws. The chapter argues that even in its truncated form, the passage of the Hindu Code Bill was important in shaping the gender consciousness in independent India and thereby influencing the process of law formation over the longer term.

ROLE AS A SOCIAL REFORM

The need for a general reform of the whole of the personal law of the Hindus has been increasingly apparent to lawyers through- out India as the flood of judicial decisions, the increase in the number of high courts, and the appearance of more and more legal reports has added to the confusion produced by the spectacle of modern lawyers, English and Indian, trying to delve into the minds of the ancient lawgivers and reading into ancient texts meanings which may have been far from the authors' minds. The courts, which might have tried to exercise their influence to achieve greater unity in the land, took an almost dilettante delight in finding new aspects to the law in individual cases and creating new diversity till, in the words of an English commentator, Hindu case law was 'a luxuriant jungle in which it is impossible to see the wood for the trees'. It seemed at times as if the law was developing along lines which were in accord neither with the spirit of the ancient writers of the smritis and srutis nor with the needs of modern times. Writers of the standing of Sir Hari Singh Gour and Sir Dinshah Mulla tried to reduce Hindu Law to written works that had the clarity of a code, but they could not be completely successful as there was so much in the system that needed to be reformed. A chaotic state of affairs has resulted. A Hindu could have as many wives as he chose. A Muslim could have up to four. A Hindu had no divorce. A Muslim could divorce at will. But in some parts of the country Hindus enjoyed some form of customary divorce either at will, or on payment of a fine or under some other conditions. Among the people of Malabar and the Canaries country there were loose forms of marriage which in effect permitted a woman a good deal of freedom, and the form of succession was matriarchal, as distinct from the patriarchal system generally prevalent among Hindus, In part of India a son's

rights in the estate of a Hindu father only materialized on the father's death; in the rest of the country it vested in the son from his birth so that he became a joint owner in the family estate. Some Muslims followed the Hindu law of joint family and succession to property. Others followed their own system. Religious marriages between Hindus of different castes were not possible. Even where a Hindu husband had no intention of taking a second wife, a Hindu marriage was not register able and had not the same value in the law courts as the exclusive monogamous union of a Christian husband and wife. Thus a Hindu might abandon his Hindu wife, to whom he had been married with full religious ceremony, and contract a civil marriage with another woman. In the eyes of the law the civil marriage would be quite valid, and, furthermore, it would bar him from further marriages so long as it lasted. The call for reforms was inevitable with the seeping into India of new ideas as a result of contact with other countries and the coming of Western education. The Hindu might still cherish his inheritance in a sentimental way, but he could not but recognize the limitations of an old social code in life in a new era. From distant London judges of the Privy Council might declare that 'no variations or uncertainties should be introduced into the established and widely recognized laws which govern ancient Eastern civilization'. Yet the very decision in which Lord Sumner made this profound statement of respect for the past was the cause of a demand for change on the part of Hindus which led to the Gains of Learning Act. Nothing could better illustrate the desire of progressive Hindus for change and the inability of judges of the Privy Council to sense the mood of a new age in India, despite the occasional presence on their bench of Indian judges.

Thus while some further delay in the enactment of the Code will help to close the gap which may be left between public opinion and the views of the more enlightened leadership, it is imperative that once the electioneering atmosphere has been dispelled the legislature should get to work on the enactment and the scores of amendments to it so as to bring forward the day when the Hindus will have a uniform common law. A new code will give the Hindu community, and Hindu marriage in particular, improved standing in the world generally. It will be of value even beyond the limits of India, for it will give the courts of Pakistan, Ceylon, Malaya, and other countries with large Hindu communities a lead on which to act in the handling of that community where they might otherwise have hesitated to introduce changes that would have exposed them, in the case of Pakistan at any rate, to the charge of intolerance. Most important of all, the Code will be the best proof of India's intention to implement promises of equality contained in her Constitution and to give women rights which might well have come before the grant of the franchise.

IMPACT OF THE BILL ON INDIAN WOMENS

The path of reformers to whom we owe whatever little civilisation there is, has always been long and hard. The Hindu Code, when it came soon after Independence, was a historic milestone in women's movement in India. But it was possible for Jawaharlal Nehru to put it on the Statute Book, despite his most eminent critics, because a climate of opinion had been created in the first and second half of the 19th century by men like Rammohun Roy, Ishwarchandra Vidyasagar in Bengal and Ranade and Telang in what was then the Presidency of Bombay. They had struggled tenaciously against orthodoxy, bigotry and evil customs and made Nehru's task easier. The Hindu Code transformed, at least theoretically, women's lives by providing with two very important rights to them - right to divorce and property right. These went a long way towards empowering them and giving them a new status in society. According to Hindu - and Christian - tradition, marriage was a sacrament. It was permanent union between the husband and wife who were exhorted to strive their utmost to make it a success. However, often marriages did not succeed and unhappy and incompatible marriages became nothing but fetters for the couples concerned. By the Hindu Marriage Act of 1955, the right of divorce was for the first time granted to women on certain specific grounds. So, in a male-dominated society as it was in India, women were free to relieve themselves of unhappy married lives and to choose lives of their own. Moreover, the second part of the Hindu Code, that is the Hindu Succession Act of 1956, made a Hindu woman owner of all property, acquired from a male Hindu dying intestate. This gave her economic independence necessary to lead a life of her own choice. The Hindu Code, therefore, was a significant contribution to the attainment of freedom by Indian women. The extent to which the Hindu Code transformed the lives of Hindu women can be analysed by an attempt to assess their position before the passing of the Code and after. It is not very easy to evaluate the condition of the Hindu women in India during the second half of the 19th century. The life of an average Hindu woman was very difficult and pitiable owing to the existing social customs and practices of time. It is now a matter of common knowledge that during the Vedic period, Indian women enjoyed a great deal of freedom. In the pursuit of knowledge and virtue, in the performance of rituals, in the composition of hymns and in other activities - temporal or spiritual - - women were considered to be equals of men. Famous women like Gargi and Maitrayee were prized possessions of ancient Indian society. The Hindu women displayed outstanding capabilities as administrators and warriors. Apart from Meerabai who distinguished herself as the poet queen of the fifteenth century, the warrior queens Ahalya Bai and Rani Laxmi Bai of Jhansi, became immortal for displaying rare courage and determination in the field of battle. Rani

Bhawani of Natore in Bengal exhibited rare ability in managing her estates. Hati Vidyalkar, a Bengali resident of Varanasi, and Shyammohini Devi of Bengal were two eminent Sanskrit scholars.

Inferior Status

The condition of Indian women in general and of Hindu women in particular, began to deteriorate after the coming of the Muslims in India. This was largely due to a natural social response to the challenge posed by the disturbed condition following foreign invasions of the country as well as internecine conflicts. Some undesirable social customs consequently crept into the society which gradually reduced the Indian women to a state of perpetual bondage. When raids and warfare became a common occurrence in India, the fear of insecurity of unmarried young women was perhaps largely responsible for the emergence of the system of early marriage. This most probably led to the emergence of the cruel dowry system which prevailed in India for centuries and persists even today. The fear of insecurity was to a great extent responsible for the growth and continuance of the system of Sati. The emergence of Purdah system and seclusion of women was a by-product of such fear. With no organized system of education to sustain her, a female child, often married even before she had learnt the alphabets, remained unlettered and absolutely dependent upon men economically and otherwise. Gradually, the belief grew in Indian society that women were destined to have a status inferior to men. At the beginning of the 19th century, the position of Indian women had reached the "lowest depth of degradation". Any discussion of the condition of women during the second half of the 19th century must analyse the social customs with the accompanying evils, which prevailed in the society. Family was the most important centre in the life of an Indian. The traditional pattern of family was the joint family which included father, mother, grandfather, grandmother, brothers, sisters and also other relatives. The Western concept of nuclear family consisting of husband, wife and children only had not emerged then. Marriage was a social institution and the union of a couple was regarded as a social alliance between the two families of the bride and the bridegroom. Making one's family happy was one's sole aim of life. Personal happiness and gratification were given the least priority. The chief objects of Hindu marriage were Dharma (religious duty), Proja (progeny) and Rati (conjugal love). Child marriage was a bane of the Hindu society. The girls were often given in marriage at the age of ten or even below. More tragic than the child brides was the lot of upper caste Hindu widows in the society. Often looked upon as a drudge in the family, a widow invariably led a miserable life. The condition of a child widow was still worse. Women in Hindu

society had no right to succession to property. That made them dependent on men. A Hindu widow, therefore, inherited nothing on either side. She was only entitled to stay and live in her husband's family till death. She had no right beyond maintenance to keep her body and soul together.

Filling Gaps

Despite these efforts, lot of gaps remained in the legislation intended to improve the position of women in society. Though they cannot be discussed here for want of space, they are significant in the sense that they led to the framing and passing of the Hindu Code of 1956. The Hindu Code aimed largely at filling up these gaps. It had two parts - the first part dealing with marriage was passed in 1955 and the second part dealing with property was passed in 1956. The right of divorce was eventually granted to women by the Hindu Marriage Act of May 18, 1955. This is the first part of the Hindu Code which provided for divorce, the principal grounds for which were: (1) Living in adultery; (2) ceasing to be a Hindu by conversion; (3) renouncing the world by entering a religious order; (4) incurable insanity for three years; (5) virulent and incurable leprosy for three years; (6) not having been heard of for seven years; (7) not having resumed cohabitation for two years after the passing of a decree for judicial separation; (8) failing to comply for two years with a decree for restitution of conjugal rights; (9) the husband having married again and the second wife still being alive; (10) the husband was guilty of rape, sodomy or bestiality. Divorce by mutual consent was provided for in section 28. No hasty divorce could be obtained on this ground. Every petition was to be preceded by living separately for a period of at least two years. The Hindu Marriage Act also granted two other matrimonial remedies. These were the restitution of conjugal rights and judicial separation. A decree for restitution, where one party had deserted the other, could be granted where the grounds relied upon by the respondent were found to be unsatisfactory. However, the court's order for restitution of conjugal rights is often violated, because a mere order of the court is not expected to change the mind of a spouse who has severed all connection with the other. A significant benefit acquired by women from the Hindu Code was that monogamy was strictly emphasised. This relieved the Hindu women from the pang of suffering the existence of a co-wife. The Hindu Succession Act of 1956, the second part of the Hindu Code, provided a share to a female even in respect of property owned by a joint Hindu family of the Mitakshara type. The Act provided a proper solution to strong divergent views regarding Hindu women's position in the order of succession without disrupting the Mitakshara coparcenary. The Act adopted the Dayabhaga system under which property was to be held by the

wife and children as personal property with an absolute right to dispose it. Under the old law, a discrimination was made among female heirs on grounds such as whether a particular female was rich or poor, whether she was with issue or without issue. All these discriminating points were now abolished by this Act. It converted the women's limited estate into an absolute estate; and secondly, it abolished the right of the reversioners to claim the property after the widow. The Hindu Code further gave women their due importance by two other significant provisions - the Hindu Minority and Guardianship Bill as well as the part dealing with adoption. Under the former, the custody of a child under the age of three was to be normally with the mother, though the natural guardian was to be the father and after him the mother. The mother was not deprived of her right of guardianship by her remarriage and the widowed mother might also appoint a guardian by will so long as her husband had not already appointed a testamentary guardian for the same minor child. Similarly, according to the adoption part of the Hindu Code Bill, the father, who under the shastric rules could give his son in adoption without his wife's consent, was forbidden to do so as long as she was alive and was competent to give consent, that is to say, was sane and was above 18 years of age. No other qualification for the mother was required. Further, the mother alone could give the boy in adoption if the father was dead or had renounced the world by becoming a hermit or ascetic or had ceased to be a Hindu or was not capable of giving consent.

Benefits Summarised

So the mothers received their proper places in the Hindu Code. In fact, the benefits derived by the Hindu Women from the Code may be summarised as follows:

- (1) No girl below the age of fifteen could be married;
- (2) Monogamy was strictly to be followed;
- (3) Marriage was no longer sacrosanct and divorce could be obtained under certain specific grounds;
- (4) Sons and daughters were given equal footing in the matter of inheriting the parent's property;
- (5) Women derived the right to succession and their property were to be life estates and they were given the full authority to dispose them of in the manner they liked;
- (6) The mothers received the full custody of their children less than three years of age;
- (7) Children could not be given in adoption without the mother's consent if she was in a position to do so.

The Hindu Code, therefore, intended to provide a break-through in the life of Hindu women by setting them free from the shackles of unhappy marriages and by providing them with rights of inheritance. This was supposed to infuse a sense of confidence in women and to empower them to fight independently and boldly against the injustices committed against them. Regrettably, however, the dream of the legislators of giving Hindu women a position of equality in society was belied. For the law did not work well in actual practice. Because, a society cannot, after all, be reformed by legislation alone. This has to be done by an accompanying transformation of ideas and outlook of the society at large. First of all, divorce was looked upon as a stigma in Indian society. Divorcee girls, therefore, found it extremely difficult to resettle in life by getting married for the second time. Secondly, children were the worst sufferers of the consequences of divorce. So few women could gather courage to walk out of their husbands' homes and continued to suffer silently the evils of unhappy marriages. Further, majority of women had no refuge to take shelter after leaving their husbands' homes, because of refusal by their parents to help them out in their distress. Many of them lacked education and thereby failed to re-establish themselves by securing a job. Very difficult job markets enhanced their miseries sharply. Social institutes for rehabilitating displaced women, therefore, became an urgent necessity.

CONCLUSION

The application of the Hindu Code Bills have been controversial in determining who is to be called a Hindu and who is entitled to be exempted from certain rules of Hindu law.

They are also still contentious among many communities, including women's, nationalist and religious groups. At the time of their creation, many portrayed them as a serious deviation from Hindu legal precedent. Feminists, such as Nivedita Menon, argue that since the personal laws cover matters of marriage, inheritance and guardianship of children, and since all personal laws discriminate against women, the tension within the laws is a contradiction between the rights of women as individual citizens and those of religious communities as collective units of the democracy. In her 1998 article "State, Gender, Community: Citizenship in Contemporary India", she calls for more support and initiation for reform within all personal laws and more legislation in areas that are not covered by secular or personal laws, such as domestic violence. She also argues for a gender-equal framework of rights that covers the "public" domain of work (maternity benefits, equal wages) and is available to all Indian citizens, thus avoiding a direct confrontation with communities and communal politics.

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