For a very long time, the identity of motherhood, revolving around the idea of bearing and rearing the male child, played an important role in the socialization process of Indian women. The social construction of Indian motherhood was influenced by customs and practices in which motherhood was assigned a sacrosanct space as a crucial determinant of the ultimate identity and worth of Indian women. The identity of motherhood thus completely overshadowed all other
identities of Indian women and as a result, the Indian woman was raised in a culture that trained her to be an ideal mother from early childhood. Examples of such glorification of motherhood can be traced in Indian discourse from the distant past to the present. During the debate over the Hindu Code Bill in the Constituent Assembly, for instance, Pandit Thakur Das Bhargava, a member of the Constituent Assembly from East Punjab observed: “Women are the mothers of the race. No race can advance till its women can be responsible mothers and conscious citizens. There has been a good deal of propaganda done about educated women. A handful of educated women, it is said, want this Hindu Code or want this very halting and mild measure of reform. Sir, so far as women are concerned, it must be a handful because after all the educated element of this country is 15 per cent and the women who are educated are about 3 or 4 per cent even now. So, so far as the women are concerned it must be a handful, but behind them are, not today only but from decades past, the large mass of enlightened and progressive men who stand behind them.”

In a similar vein, in the clause by clause discussions on the Hindu Code Bill in the Parliament, Pandit Madan Mohan Malaviya stated “In the Brahman society the woman has been given the highest place. There is nothing higher than the mother.” In a similar manner, legislator Krishna Chandra Sharma noted: “Our mother is a respected being and our daughter is part of our life and blood. Is that not so? Why then do you raise the cry that this is something which will bring down Hindustan and that the Hindu society will be crushed to pieces? There is nothing in religion, there is nothing in culture, there is nothing on the basis of Hindu society that is against these conditions and repugnant to them.”
Motherhood was thus central to the structural configuration of the family, and was characterized by a glaring dichotomy one associates with patriarchal dominance, glorification without empowerment. As a matter of fact, the glorification of motherhood co-existed with her low status in social structure. Rituals surrounding the birth of child in family clearly indicated that the centre of attention remained the father and the child, while the mother was neglected in the entire episode of childbirth. After the delivery of the child, the role of the mother gets over and the mother is pushed back into the inner courtyard, as observed by Bhattacharya (1990):

“\... the rituals and prayers are all directed towards the baby; the mother is neglected. From then on the father takes charge of the baby and conducts her naming, the first rice-meal, the tonsure, the piercing of the ear, until the ritual initiation for education. The mother, after all her suffering, tension, anxiety and pain is quietly forgotten, shelved to the dark oblivion of the interior of the house until she conceives again when the same cycle is repeated.\”

Women’s deprivation from access to food and basic necessities, reproductive health care, property rights, independent income, rights in decision making process in relation to the children and family, and her rights as widow did not get adequate attention for a fairly long period in Indian history. The patriarchal subordination of women as mother was premised upon Manu’s invocation of the superiority of the seed over the womb: “Of the seed and the womb, the seed is superior. All creatures of life assume the qualities of the seed.\"\" The notion got fossilized over time and
broadened during the Mughal rule where too patriarchy made motherhood invisible in the anonymity of the harem. While the reproductive production of wives under the harem was important for continued expansion of the empire, motherhood was not considered worthy of much emphasis and ignored even in imperial birth. During Prince Salim’s birth for instance, there is no mention of the name of the mother in the official congratulatory note. Several other births mentioned in the *Akbarnama* also fail to recognize the mother.

The Indian society, however, began to demonstrate signs of change since the early nineteenth century. The nineteenth century witnessed extensive debates concerning core issues with respect to gender relations within the family and society and the abject neglect of women as wives and mothers in Indian society was put under the scanner by enlightened social reformers and also began to be discussed in an emerging media. The common thread that ran across the presence of diverse social reform movements was a reexamination of social customs and institutions from a rational perspective and the consequent redefinition of the traditional role of Indian women as wives and mothers in society. The broad aim of the social reform movements that began in the nineteenth century was to emphasize the need for removal of social and legal inequalities. With regard to women, the voices of protest against customary practices centred around *Sati*, age of consent, widow remarriage, female education and the role and relationships surrounding the institution of marriage. While the British religiously followed the policy of non-interference in customary practices, they also projected India as a white man’s burden, where colonial rule was essential for
the salvation of a backward society. Legal enactments empowering women therefore concerned mainly those customs that were grossly unacceptable from the viewpoint of western rationality.

Beginning with the onset of the twentieth century, emergence of several social forces enabled women to come out of their domestic confines and perform an expanded role in society. First, the necessities of the nationalist struggle brought women into the public sphere. The process was initiated during the partition of Bengal in 1905\textsuperscript{xi}, and intensified during the Swadeshi movement due to the synergies created by co-movements of the participation of women in the freedom movement and growth of feminist consciousness\textsuperscript{xiii}. Active participation in the Swadeshi movement helped to bring about a remarkable shift in women’s perspective towards life. A deeper understanding of the basics of agitational politics propelled women towards fighting for their own rights as daughters, wives, mothers and widows as they began to perceive the need to organize for their own cause. During 1903 to 1926, several women’s organizations surfaced in different parts of the country and an effective all India platforms emerged with the formation of Women’s India Association in 1917 and All India Women’s Conference in 1926\textsuperscript{xiv}. During this period, nationalist leaders like Subhash Chandra Bose and Mahatma Gandhi inspired women to join the path of nationalism. Gandhi, in particular, was instrumental in bringing Indian women out of their protected environment to join the Indian National Movement, thereby revolutionizing the Indian social scene. In the 1930s, women’s movement started pressing for legal reforms in regard to family laws involving the rights of women including as mothers and wives\textsuperscript{xv}.

In official circles too, discussions about improving the rights of women gained ground. There
was a growing realization that idealism surrounding the marriage and motherhood must be accompanied by effective rights for women as wives, mothers and widows. The Report of the Hindu Law Committee, 1941 observed:

“*But a lofty ideal of marriage ill consorts with a low standard of property rights: if a widow is expected to be true to her deceased husband till death, she must be assured of the means of subsistence during her widowhood*”. xvi

The process of change was most significant during the 1940s and 1950s not only because the base for further reforms for Indian women were laid down in the first three decades of the twentieth century; with regard to the legal rights of women, the Indian society was at its communicative peak in the 1940s and 1950s. The discourse of the time reflected the tensions of the prevailing incongruous ideologies. On the one hand, an emerging liberal outlook that was in favour of greater legal privileges to Indian women, thereby redefining notions of Indian motherhood and on the other, the traditional religious orthodoxy demonstrated the anxiety about preserving the highest morals as reflected in the customary practices of the Hindu society; which within the contours of the family meant upholding the notion of ideal motherhood. The decision by the Government in 1941 to form a Hindu Law Committee to look into some aspects of Hindu Law, mainly property rights of Hindu women and in 1944 to reconstitute the Committee to prepare the complete code of Hindu law in the contemporary context raised the debate on the rights of Hindu women to unprecedented
heights. While the women’s organizations and liberal forces saw this as an opportune moment in history to put India in the path to become a progressive, modern and egalitarian nation, the orthodox segments strongly resented and resisted the Hindu Law committee’s efforts to tamper with the sacred Hindu religion. In the debate over the Hindu Code Bill, the motherhood identity became a contested notion. The ‘pativrata’ domesticated ideal mother dedicated to progeny became the signifier for the immense virtues of Hindu religion. At the same time, a new identity of motherhood gained ground, a mother who is placed both in the private and the public spheres, a mother whose education generated several positive externalities in the family, and as a companion to her husband, she made the Indian family worthwhile to live. While the legal resolution of the conflicting imagery can be found in the enactment of the Hindu Code Bill in 1955 and 1956, the interlinkages between social consciousness and law formation made the 1940s and 1950s an extremely fertile phase in Indian socio-legal history. The inclusiveness, vibrancy and the intensity of the process of law formation within the public sphere and the legislature ensured that the period was to be identified as a major break in Indian social history.

The book tries to delineate the various threads of the debate over the notion of motherhood in Indian society during the 1940s and 1950s, by looking at the process of law formation. The book is structured as follows. Section II deals with the legal debate over the patriarchal conception of motherhood during the formative stages of the Hindu Code Bill. It discusses the legal position of the mother prior to the Hindu Code Bill and highlights the improvements as embodied in the Hindu Code Bill. The progressive elements of the family law reforms of 1955 and 1956 are also
discussed. Section III addresses the contesting images of motherhood over the Hindu Code Bill debate. Examining the debates in the public sphere as well as in the legislature, the section underscores the centrality of motherhood in the Hindu Code Bill controversy. Section IV concludes.

II

Motherhood in Hindu Code Bill: The Legal Dimension

It is now rather well understood that religious customs in India failed to ensure equal rights for Indian women. As a matter of fact, the legal system, which emerged out of customary practices, was also not very kind to the Indian mother. Under customary arrangements, plurality of law was an essential characteristic of Indian communities. Most disputes were settled by village and caste councils as per the ruling local customs which, though influenced by the Shastras and ancient commentaries, were flexible adaptations of Smritis and Dharmashastras. The British found the Indian personal laws, at best, puzzling and their attempt towards a definitive Indian legal system was cast in the mould of the structuralist rationality of the West. The British thus presumed that the personal laws in India must have drawn legitimacy from some fundamental religious source, and attempted at codification of the Indian legal system. In May 1773, eleven Pandits started preparing a Digest of Hindu laws as per specifications of Hastings. In February 1775, Vivadamava - Setu or ‘Bridge across the Ocean of Litigation’ was completed in Sanskrit and translated under the title A Code of Gentoo Laws or Ordinations of the Pandits in 1776. This marked the beginning of
the ‘modern Shastric literature’, through which the process of Anglicization of the scriptures through translation of ancient texts to promote good governance in India was initiated.

In the process of creating new law codes, British rationality came into conflict with a number of aspects of Hindu law which they found derogatory to women. The conflict in the legal terrain also empowered the British with the justification of their existence in India. Strategically inclined towards non-interference with personal laws in India, the British administration needed social triggers to alter the laws that seemed irrational to their conscience. In the nineteenth century, such an impetus came from the social reformers like Raja Ram Mohan Roy and Ishwarchandra Vidyasagar who raised their voices stressing the necessity to stop cruelty towards women in the form of customary practices like Sati and the social isolation of widows. In response, the British started reforming some Hindu laws which they found extremely harmful to women. The onset of the twentieth century saw an intensification of social pressure for changing the legal status of women. Alongside the social reformers, a number of women’s organizations stressed legal reform for women as a precondition for social success. The All India Women’s Conference (AIWC) attempted to remove the legal disabilities of Indian women. The reforms attempted included changing marriage laws to raise the age of marriage for women to fourteen in the Child Marriage Restraint Act, 1929. Women’s organizations also emphasized the need for giving property rights to women. In 1937, in spite of strong resistance from the orthodox quarters of the Assembly, the Hindu Women’s Rights to Property Act, 1937 was passed. It gave the Hindu widow, who had previously been excluded from inheritance, a right to intestate succession. It also gave her the same interest as her
deceased husband in undivided joint families. However, this was only a limited interest, as this on her death would be inherited by the husband’s heirs. Also at remarriage, the widow could forfeit such property. In 1940, a Federal Court judgment ruled that Hindu Women’s Right to Property Act is not valid in the devolution of agricultural land. This is because the agricultural property falls in the ‘jurisdiction of provincial legislation’ while the Hindu Women’s Right to Property Act of 1937 was a central legislation, provincial reforms were also necessary to bring into its fold the crucially important property of agricultural land in a predominantly agrarian society like India. In the wake of the controversial ruling of the Federal Court, the Government was quick to appoint a four member committee to look into the limitations of the Hindu Women’s Right to Property Act, 1937. The Chairman of the committee was Sir B.N.Rau, Judge, Calcutta High Court and the three members of the Committee were Shri Dwarkanath Mitter, Ex-Judge, Calcutta High Court, Shri J.R. Gharpure, Principal, Law College, Poona and Rajratna Vasudeo Vinayak Joshi, High Court Pleader, Baroda. In June 1941, the Rau Committee submitted its report, to the Government recommending the need for a complete overhaul of the Hindu Code as piecemeal legislation will generate insurmountable contradictions in the system as has been amplified by the Hindu Women’s Right to Property Act, 1937. Based on this recommendation, the Hindu Law Committee was revived on January 20, 1944, for the purpose of formulating a complete code of Hindu law, which should be complete as far as possible under the chairmanship of Sir B.N. Rau, with Shri Dwaraka Nath Mitter, retired Judge of Calcutta High Court, J.R. Gharpure, Principal of Law College, Poona and T.R.Venkatarama Sastry an advocate of
Madras High Court. At the dictates of the Government, the reconstituted Rau Committee prepared a complete Hindu Code and circulated it among the lawyers, opinion makers and social and religious organisation in Bombay, Poona, Delhi, Allahabad, Patna, Calcutta, Madras, Nagpur and Lahore.

A significant attempt at empowering the Indian mother was visible in the efforts of the Hindu Law committee. In a significant departure from the extant laws relating to marriage, the Hindu Code Bill attempted to introduce two types of marriage, i.e., the sacramental marriage and the civil marriage. The provision of civil marriage provided for greater individual freedom in two ways. The first was that it was easier to escape the rigours of degrees of prohibited relationships where the Hindu Code proposed to be more relaxed, in keeping with the liberal outlook. The second was easier access to divorce under civil marriages, which was not accepted in traditional Hindu sacramental marriages performed under Samskara. Any Hindu married through sacramental marriages as per the proposed Hindu Code Bill, could get registered under the civil marriages and thereafter apply for divorce. It provided for divorce (nullity) on grounds of impotency, Sapinda relationships, either of the married couple being lunatic or idiotic, and where the marriage was completed by force and without the consent of guardians. The divorce rules were much more liberal as compared to the Indian Divorce Act, 1869. At that time, except in Baroda (Baroda Hindu Act, 1937), Bombay (Bombay Hindu Divorce Act, 1947), Madras (Madras Hindu (Bigamy Prevention and Divorce) Act, 1949) and in 1952 in Saurashtra (Saurashtra Hindu Divorce Act, 1952), divorce was an unknown quantity in India. Thus, it represented a major structural break in social legislation,
causing much consternation among puritans. For Indian mothers, it was an enabling provision, recourse to escaping domestic turmoil and violence.

Another empowerment of Indian mothers came from the proposed removal of polygamy. Arguing that “the pride of Hinduism was that although polygamy was permitted in theory, it was monogamy which was actually practiced,” the Report of the Hindu Law Committee, 1947 argued that the provision of monogamy in the law will “prevent the husband from deserting the wife at will”.

The Hindu Code Bill proposed significant expansion in the property rights of Indian women. The basic change proposed by the Hindu Code Bill was to treat the heirs of intestate succession not as coparcenaries but as individuals entitled to personal property. The Hindu Code Bill proposed to confer absolute property right to the heir that would give him power to dispose off his portion of property. This system was prevalent in regions of India under the Dayabhaga rule. The Mitakshara rule of inheritance was thus proposed to be replaced by the provisions contained in the Dayabhaga rule. Secondly, the Hindu Code Bill proposed the removal of the law of inheritance through agnates, and stressed relationships in determining inheritance. In the process the widow, the daughter and the widow of a predeceased son were brought on an equal footing under the proposed code prepared by the Rau Committee.

Prior to the preparation of the Hindu Code, there existed two types of property that women inherited, Stridhana and women’s estate. The Hindu Code Bill proposed that so far as right to property is concerned, there should be uniformity and uniformity should recognize that the woman had absolute property. The Hindu Code Bill proposed absolute right to women in all property, not
only in her Stridhana property. The Hindu Law Committee in their Report of 1947 came to the conclusion that if in case of Stridhana women were competent and intelligent to sell and dispose of their property, they must be held to be competent in respect of the disposal of the other property also. Accordingly, the Committee suggested that women should possess absolute property. In order to promote gender equality, the Hindu Code Bill proposed that the son would also get a share of the Stridhana, half of the share of the daughter.

In order to contain the oppressive practices associated with dowry, the Bill proposed that dowry given at the time of marriage will remain a trust property till the bride reaches the age of eighteen years, to ensure that neither the husband nor any other relatives could exploit the situation.

With regard to adoption, the Hindu Code Bill empowered the mother by restricting the right of an adopted son to take away all property accrued to the widow from the deceased husband before adoption. Also, by proposing to do away with customary practices such as Kriithrime adoption, Godha adoption and Dwaimushayan adoption, the Hindu Code sought to create a situation where the adopted son would no longer be in a position to divest the mother completely of her property. Consequently, it strengthened the widow’s position in the family by making her an absolute owner of her deceased husband’s property in the presence of an adopted son. However, the father continued to be the natural guardian of the child and the important decisions relating to the child continued to be determined primarily by the father.

While these proposals that affect the Indian mother were progressive and some of them
path breaking, regarding certain rights surrounding motherhood the Hindu Code Bill retained the orthodox patriarchal stance, despite the plea made by the women’s organisations. Prior to the Hindu Code Bill, guardians could be classified into three groups, *viz.*, natural guardian, guardian appointed by father by way of a will, and guardians appointed under the Guardianship and Wards Act, 1890. The first two categories borrowed their authenticity from the Hindu *Shastra*s while the third was a result of the British endeavour of codifying the Hindu law. The Guardians and Ward Act, *1890*, did not alter the rights of natural guardian as conferred by the Hindu Shastras. It however added that if the court appointed a natural guardian, the natural guardian under the Hindu law ceased to function. Its main features were:

- a. Father was the natural guardian of the minor.
- b. The natural guardian could mortgage, sell or otherwise transfer immovable property of the minor and there was no need of prior sanction by the Court.
- c. A Hindu father could nominate a guardian, orally or through execution of a deed, so as to exclude the mother of the child as a guardian.
- d. The mother had no right to appoint testamentary guardian even if the father expired.

The Hindu Minority and Guardianship Act, 1956 made several modifications of the earlier Act, though the father remained the natural guardian of a child. If the father neglected the minor, avoided any responsibility then the Court may accept the mother’s authority in the interest of the children. Further, the custody of the child below the age of five years would ordinarily be with the
mother. The authority to the father to appoint a testamentary guardian and thus to exclude
mother from guardianship was retained in the Hindu Code; with the improvement that even if the
father appoints a testamentary guardian, it shall not exclude the authority of the mother as a
natural guardian if the father died and the mother was capable of acting as a natural guardian.

The issue of maintenance was also not treated with the required detail in the Hindu Code Bill and the discretionary power to give maintenance rested with the Court. This led later to several undesirable outcomes, arising out of the difficulty in establishing the income of the husband, expenses on litigation, lack of guarantee of regular payments of alimony. These difficulties associated with this aspect of Hindu family law reform forced women to plead under Section 125 of the Criminal Procedure Code which was not really the relevant procedure for the divorced wife. The very fact that women accept this trade off between time fighting cases and monetary compensation clearly demonstrated the failure of the proposals contained in the Hindu Code Bill draft regarding maintenance and in the subsequent Hindu Adoptions and Maintenance Act, 1956.

During 1955 and 1956, a modified version of the Hindu Code Bill was adopted by the Nehru Government in the form of four separate acts, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, Hindu Minority and Guardianship Act 1956 and Hindu Maintenance Act, 1956. These Acts were framed in the spirit of the Constitution of India which granted equal rights to all. These four Acts became the pillars of legislative efforts of Independent India and had profound effects on the lives of women.
The process of transition which escalated with the coming into existence of the Deshmukh Act in 1937 to the family law reforms of 1955 and 1956 saw significant communicative interaction of the legal sphere and the public sphere. Law was created not merely by the lawyers; it was the outcome of intense social interaction. The Hindu Code Bill was intensely debated in legislature, in Bar Associations, in social and religious organizations, in public meetings and in the women’s organizations. As a result of the intense debate, the Indian society got polarized into liberals who wanted to create a modern legal framework to build a secular India and the conservatives who wanted to uphold the sanctity of the age old Hindu religion and its rituals. As the debate engulfed the educated segments in many cities across the whole nation, the discourse over Hindu Code Bill came to represent the transient social consciousness of a nation trying to emerge out of colonial shadows through a major nation building project. The notion of motherhood was placed right at the epicenter of the debate over Hindu Code Bill.

One of the central aspects of the debate surrounded the identity of motherhood. Under the British, however, this feudal form of Brahmanism gave way to a modernised, updated, ‘reformist’ Brahmanism which constructed an image of ‘Hindu woman’ transcending caste differences but
drawing to a considerable degree from the patriarchy of traditional Brahmanism. Beneath reforms such as the sponsorship of widow remarriage were the important high caste norms of pativrata, i.e., the ideal wife, the sanctity of marriage, and the authority of husbands in the home to all the sections of what was now seen as a ‘Hindu community’. Thus, even as castes were homogenised into a larger Hindu legal structure, British administrators and their Indian counterparts ensured the maintenance of Brahmanic ideology by establishing a legal structure that made Brahmanic ideals the basis of the norms for everybody else. In effect, this meant that the lower-caste women were compelled to conform to the norms for the upper-caste women. Whereas earlier Brahmin woman had in the ‘caste-patriarchal bargain’ traded prestige and status for greater confinement and bondage, now low caste men were offered a chance to trade the relatively greater independence of ‘their’ women for some of the status of the twice-born castes. Thus, the British efforts at codification of Hindu laws aided in preserving the kernel of patriarchal notion of motherhood in Indian society, epitomized by the tradeoff of glorification of the mothering as a social role at the cost of abject denial of absolute rights of mother. This patriarchal conception of motherhood, however, came to be strongly challenged by liberal segment of the Indian population during the 1940s, with support from women’s organizations, which, by then, had assumed pan-Indian character. Consequently, the proposed reconstruction of the frozen perception of motherhood through her empowerment turned out to be the key area of communicative action over the Hindu Code Bill.
The process of redefining the Indian motherhood was painful and contentious. Opposing ideologues presenting diverse views of Indian femininity and ideal motherhood appeared in the discourse of the time. Broadly speaking, contesting images of motherhood appeared both in the public sphere and the legislative sphere. In the public sphere, the debate was seen in the public debate over the Rau Committee report, 1941; in the evidence collected by the Hindu Law Committee in 1944 and 1945 and in the sporadic references and letters that appeared in the print media. The debate over the Hindu Code Bill, to a great extent, shaped the modern Indian notions of motherhood.

In the absence of a social consensus, the power play between the liberal and orthodox segments was a foregone conclusion. But the extent of divisiveness brought about by the debate was indeed unexpected. In trying to figure out the role of women as wives, mothers and widows in society, the entire society got polarised. Bar Associations were divided, political parties were segmented across liberal and conservative ideologies, social associations took drastically different stances and the women’s associations also looked at the issue from diverse positions of the liberal-conservative spectrum.

It is noteworthy that several organised women’s associations (WIA, AIWC and others) with pan-Indian character provided strong support to the Bill. Through its journal, Roshni, the AIWC pressed strongly for a Hindu Code in which men and women had equal rights in inheritance and marriage. The AIWC held a Standing Committee meeting in Bombay in May 1941 to draft a statement to the Rau Committee and answer its questionnaire. The women’s movement protested the absence of
women on the Rau Committee and urged an expansion in the scope of the Committee so that all areas of Hindu law could be codified and reformed. The demands of the women's organizations encompassed equal rights in inheritance, marriage, guardianship, requirement of the consent of both parties for marriage, abolition of polygamy, and legalization of divorce. The AIWC also urged provincial Legislatures to extend the Deshmukh Act to agricultural land.

The debate over the construction of motherhood in Indian society through legal reforms centered around several rights of women. These rights encompassed property rights, marriage rights such as monogamy and divorce, rights of guardianship and custody of children, rights relating to adopting a child and giving away a child in adoption and women's right to maintenance.

**Debating Property rights**

Property Rights for women was the reason why the Hindu Law Committee was set up in 1941. The orthodox view was that apart from disrupting the religious fabric of society, the Code also disrupted the economy by giving women more property rights leading to the fragmentation of property. In the Legislative Debate in 1943 and 1944, deviations from firmly grounded notions of motherhood and femininity were criticized by a sizeable segment of legislators when the draft Hindu Code Bill. The legislature was divided by sharply polarized views over the emerging construction of femininity and motherhood embedded in the Bill. Babu Baijnath Bajoria, the leader of the opposition, for instance, argued that Hindu women, being nurtured by society to fulfill the role
of ideal wives and mothers, were not in a suitable position to manage property. He thus moved an amendment for postponement of the Bill that proposes to destroy the very notions of family and the place of women within the family. In the same vein, Bhai Parmananda, a vocal legislator with orthodox views, criticized the Government for destroying the very basis of Hindu society, when there was no demand for change among the people. The Bill, he felt, was likely to destroy the family structure and would lead to fragmentation of property. He felt that giving women greater property rights in the form of simultaneous heirship of the daughter as recognized in the Bill, the moral obligation felt by the brother to maintain and marry off his sisters would vanish. Another member of the Assembly, Lalchand Navalrai, warned women’s associations that “More or less we are plunged into the ocean of Western ways and we should not allow ourselves to be drowned”. He raised an objection regarding the right of a married daughter who would get a share from her husband’s side and also a share in her parental house. Therefore, she would get two shares whereas the son would get only one. Renuka Ray used texts which had been utilized by Ram Mohan Roy in the 1820s, to demonstrate that women had originally enjoyed inheritance rights under Hindu law.

The question of property rights to women was one of the dominant themes in the public debate over the Hindu Code Bill in 1944 and 1945. Strong support in favour of property rights for women came from the liberal segments of society and the Women’s associations. In the oral evidence tendered to the Hindu Law Committee in Bombay in January, 1945, M.C. Setalvad, representing the Bombay Bar Association stated “The Mitakshara Jurisdiction should fall in line in this respect
with Dayabhaga. These doctrines lead at present to a great deal of litigation and immoral litigation at that. This is my personal view and also the view of the majority of the Bar Associations."

Supporting widows right to absolute ownership of property, Setalvad argued that “widows should inherit in the family of the husband as at present in Bombay”.  Lady Vidyagauri Neelkanth, President, Gujarat Social Reform Association and the Bombay Provincial Women’s Council (Ahmedabad Branch) observed the Hindu Code Bill as a compromise between liberal and conservative values in society. She said, “Much as I would like sons and daughters to have equal shares, I accept the provisions of the Code as a compromise.” She also supported the conferment of absolute rights to women, “I support the absolute estate to women. I do not feel that women are incapable of safeguarding their interest in any property any more than men are. Women alone are not exposed to the dangers of squandering: men squander property quite as often”.

When the Constituent Assembly debated the Hindu Code Bill in 1948, Hansa Mehta felt that the daughter should get an equal share in the property of her father with the son and the son also should get an equal share in the property of his mother with the daughter. Supporting absolute rights to property for women, G Durgabai observed, “This takes me on to another subject and that is about the status of women with reference to the holding of an estate absolutely and not in life. The Bill seeks to remove this disqualification attached to woman’s estate and it gives her the right to hold property absolutely and not for life only. The main argument in favour of limiting the estate in the case of women is that they are incapable of managing it and also that they are likely to be duped or exploited. Also it is said that they are illiterate and they do not understand the principles
of management and hence there will be a strong inducement to designing male relatives to lake away her right. My answer to all this is this. The House is aware that the daughter has an absolute estate in Bombay today. Therefore, on that ground I do not think they are exposed to any risk. The other argument is that we have score of instances where women have proved better managers than men.°xxxii

The opposition to giving women an absolute estate in property was equally strong. The critiques of the Hindu Code were quick to point out that the Hindu Code was a deviation from the Hindu Shastras as expounded in the well known texts of Manu, Yajnavalkya and Parasara and others. One such outburst can be seen in the oral evidence of Sunderlal Joshi, President of the Hindu Code Deliberation Committee of Nandiadxxxiv. Therefore, they were against conferring absolute rights to women in property. In a similar vein, Mr. Ganpat Rai, Advocate, representing the Delhi Provincial Hindu Sabha, a branch of the All India Hindu Mahasabha stated “I object to the granting of an absolute estate to women. My objections are: (1) that in order to keep the property in the family, they will begin to marry sapindas; (2) that women are weak physically; (3) that their character will suffer, if they are given an absolute estate”xxxv

Rai Bahadur Harishchandra, on behalf of the Provincial branch of the all India Hindu Mahasabha (Delhi branch) observed “Women should only have a limited estate, even if Vignaneswara declared otherwise. They are incapable of managing property.” xxxvi

The Hindu Code Bill, however, lacked power to legislate regarding lack of Agricultural land rights raised concern among the liberal Hindu segment, who felt that this substantially compromised with
the equal rights of women. Pandit Nilakanta Das, MLA stated “if women get an absolute estate, Muhammadans in East Bengal will take away both the women and the estate”. At the Constituent Assembly, Pandit Thakurdas Bhargava argued that if the Hindu Code Bill comes into vogue, the property rights for women as proposed in the Hindu Code will come into conflict with the cultural practices of the Hindus. He constructed a hypothetical situation when a lady succeeds to the property of the father as well as to the property of the husband, “Suppose the lady dies leaving husband and children, it is clear that the husband has been given the right and the children also succeed. So far so good. Then, when the husband and the children are not there, who succeeds? The father and mother of the lady. These people—there are lakhs like them—who do not even want to touch water from the house of the daughter, will get the property. …. Sir, that as soon as the father gives away the daughter to the son-in-law, the father never goes to the house of the daughter, never takes his food in her house and never even drinks water in her house, so that the purity is maintained that no daughter may be given in marriage for mere consideration or any other material gain. That is the basis. There are many people who would not even go to the village where the daughter is married. We must recognise facts as they are; it is no use saying that they do not know. It is quite possible that they do not know. It will happen that the father-in-law would get property bequeathed by the lady. That will be an intolerable position.”
The tussle over rights in Marriage

The Hindu Code Bill sought to introduce two major changes in marriage laws with as view to improve the condition of women as wives and mothers. The first included legally ending the practice of polygamy and the second was the enabling provision of divorce in the Hindu law.

Though polygamy was not practiced by the Hindu society in a major way, the debate could not agree on the need for introduction of legislations banning polygamy. The major contention for those objecting banning of polygamy surrounded women as mothers. The main argument was that if a woman as wife failed to perform their principal function bearing a child as a mother, for the continuation of the family, the husband should be entitled to a second wife. In the legislative assembly debates of 1943, Renuka Ray narrated sufferings by Hindu women due to lack of property rights and referred to the disastrous consequences of polygamous marriages on women. She asserted that the Hindu Code Bill would alleviate such suffering. She also argued that polygamy was immoral and had to be prohibited, as Sati had been in 1829. The President of the AIWC, Rameshwari Nehru, asked for the enlargement of the scope for the Hindu Law Committee and a complete revision of the Hindu Code. A telegram by the President of AIWC read, “We are definitely for the abolition of polygamy and would urge upon you to make your recommendations as strong as possible. But pending the provision of the Hindu law of marriage and the abolition of polygamy, we desire that the right to separate residence and maintenance be granted to Hindu women whose husband marries again.”
Lady Vidyagauri Neelkanth of the Gujarat Social Reform Association observed: “Monogamy should be the strict rule, without any exception whatever. Even in the case of barrenness, monogamy should not be permitted. Monogamy should not make men more moral, but raise the status of women in society”.

The All India Hindu Mahasabha was quite vocal in their dislike of monogamy imposed upon the Hindu society as a law, Mr. Ganpat Rai; its Delhi branch president noted “I am against monogamy in the present day conditions. A Hindu should have the right to marry as many wives as he likes without any restrictions, if any, mentioned in the well known texts on Hindu law being revived.

The Sanatana Dharma Rakshini Sabha of Meerut linked polygamy to the male issue by the first wife, “We object to the monogamy provision: a man should be able to take a second wife, unless he has a male issue by the first wife. If he has a male issue, monogamy should be enforced.”

The Divorce discourse

Prior to the institution of the Hindu Code, the legal right to divorce was not available to the Hindu women. The Hindu society regarded marriage as an indissoluble institution. This enabling provision created a significant amount of discomfort to the Hindu community. Many religious organizations found divorce completely unacceptable. For instance, the Hindu Code Deliberation Committee, Nandiad, told the Hindu law Committee that “only a kanya (virgin) can be married with
the sacramental rites...hence the reference to marriage as Kanyadan. The marriage of a kanya is indissoluble”. Such strong sentiments were echoed from all over the country. In Delhi, a representative of the Sanatan Dharma Rakshini Sabha strongly objected to divorce stating that “we would not allow a woman to get divorce and marry again even if her first husband became a lunatic or a convert”

On the other hand, women’s associations such as the All India Women’s Conference provided strong support to the provision of divorce as an enabling mechanism for Indian women. Rameshwari Nehru stated “It is difficult to expect unanimity– but the majority of vocal opinion among women is now in favour of it (divorce).” She assured HLC that “no disturbance shall arise if divorce is permitted, it will be a permissive law: of which who do not want it should not avail himself. If Hindu law refuses to permit divorce, women will be forced out of the Hindu fold”. Renuka Ray added that “Baroda has a divorce law. Few have taken advantage of it: very few and only in extreme cases”.

The fight for adoption rights

The debate of adoption was rather muted when seen against the rage and passion that engulfed the debates relating to marriage and property rights. As a matter of fact, there was little in the proposals concerning adoptions that may be termed revolutionary in terms of deviations from social practices. The status quo on adoptions was part of the balancing act of the Hindu Law Committee while drafting the Hindu Code Bill. The non–controversial nature of this part of the Code can be
understood from the reactions of staunchly orthodox segments of the Hindu community. For instance, the Sanatana Dharma Rakshini Sabha, Meerut, which was opposed to the very idea of a Hindu Code, stated, “We have no objections to the adoption provisions of the Code; nor do we have any objection to the minority and guardianship provisions”. This statement basically summed up the orthodox view of the Hindu Code Bill. The Nasarpur Bar Association, West Godavari District, claiming to speak on behalf of all Hindus of the Andhra districts, stated, “We are against the provisions of the Code except as regards the Parts relating to adoptions and guardianship. These parts, we accept, subject to slight modification”.

The liberal segments of the society pointed towards the limitations of the proposals of Hindu Code Bill relating to adoption. Dr. B.R. Ambedkar, while discussing the Hindu Code Bill in the Constituent Assembly, noted, “I think it is right that we preserve the right of adoption which the orthodox community cherishes so much, but. Sir, I do not understand why there should be adoption. Most of us who make adoptions have no name to be recorded in history. Personally, I myself certainly would not like my name to go down in history, because my record is probably very poor. I am an unusual member of the Hindu community. But there are many who have no records to go down and I do not understand why they should indulge in adopting a son—a stupid boy, uneducated, without any character—not knowing his possibilities and fastening him and fathering him upon a poor woman, whom he can deprive of every property that she possessed. Therefore, my submission is this, that if you do want to cherish your old notions with regard to adoption, at any rate make this provision that the adopted boy does not altogether deprive the mother of the
property which is her mainstay. I do not think that that limitation can be at all a point of controversy.

In the written and oral evidences submitted to the Hindu Law Committee, the women’s organizations in particular stressed the need for giving greater rights to the mother in adoption. The AIWC President, Mrs. Kamaladevi Chattopadhyay, wrote to the Hindu Law Committee that “the father should not be able to give a boy in adoption without the mother’s consent”. The AIWC also urged that “in respect of this right as well there should be complete equality between the sexes. Both a man and a woman may be permitted to adopt either a son or a daughter.” The Representative Committee of Hindu Ladies, Mumbai sought to enhance the role of mothers in adoption: “we feel that in a case whereby adopting a son is being introduced into the family and he is being sent out by his natural family, the consent of the natural mother of the boy should be compulsory where the father gives in adoption and where the father adopts, the consent of the wife, if living with the husband, should also be made compulsory”. In a similar vein, Diwan Bahadur V.V. Joshi in his letter to the Rau Committee in Bombay suggested that as the mother is now fully competent to deal with property, in the context of adoption also, she should enjoy rights similar to her husband in giving away her children in adoption.

Contesting Custody and Guardianship
Primacy of father as natural guardian is embedded in Hindu customary law. In *Githa Harihan V. Reserve Bank of India* (1994), writer Githa Harihan applied for 9 per cent Relief Bonds of the Government of India in the name of their minor son. RBI replied that "We advise you either to produce an application signed by the father (of the child) or a certificate of guardianship from a competent authority in favour of the minor son immediately to enable the Bonds for you". In protest, Githa Harihan filed a writ petition in the Supreme Court in July 1995 against RBI under Article 14 and 15 of the Constitution challenging Section 6(A) of the Hindu Minority and Guardianship act read with section 19(b) of the Guardians and wards Act, 1890. Githa Harihan herself wrote: "All the customary laws - beginning with the Hindu laws on marriage, succession and guardianship need to be examined for their violation of women's rights". The debate in which Githa Harihan was engaged is related to the role of women in guardianship. This debate came up in the course of the Hindu Code Bill. During the Constituent Assembly debates of 1948, Dr. B.R. Ambedkar stated: "The Committee felt that as this was a Code intended to consolidate the Hindu society and their laws, it was desirable to impose this condition, namely, that the father shall continue to be the natural guardian so long as he continues to be a Hindu. The Code in its altered form also has introduced another change, namely, that a Hindu widow has been given power to appoint a testamentary guardian if her husband has not appointed anyone. She had not any such power and this power has been given to her by the Select Committee."

With regard to guardianship, Hansa Mehta pointed out that father continues to remain the natural guardian of the children and observed that the women's organisations in India would like
the mother also to be a co-guardian of the children with the father.

IV

Conclusion

The Hindu Code Bill set out to achieve the most challenging balancing act in Indian social history in its endeavour to arrive at a Hindu law which while fulfilling the dreams of modernity is also compatible with core values of the Hindu society of the mid-20th century. This turned out to be a very difficult exercise, dividing the society in its opinion as never before. Families were divided in their support for the Code, the Bar Associations throughout the country got divided on the issue and many religious and social organizations had to debate internally within the organization to find out an unified approach to the Hindu Code Bill. While the codification process of the Hindu Law enveloped the widest possible gamut of issues in relation to the Hindu family laws, the discourse eventually concentrated on the imagery of women as wives and mothers within the Hindu family fold. The discourse was typified by the struggle of liberal and conservative forces over the contested terrain of motherhood. While the conservative segments over and over again upheld the elevated principles of motherhood in terms of an model, pativrata wife, confined to the private spheres of the family and centrally focused to perform her role as mother, another image of a liberated women was slowly gaining ground, owing to a fortuitous constellation of social realities characterized by the growth of western education, growing participation in the nationalist movement and emergence of pan-Indian and localized women's organizations. The fractured social
consciousness with the co-existence of multiple images of women in Indian society called for a synthesis to sustain the social fabric. The Hindu Code Bill provided a platform to achieve a consensus on motherhood in Indian society - and contributed towards transforming the Indian mother from its domestic confines with exclusive focus on child bearing and rearing towards a somewhat broader role with presence both in the domestic and public spheres. By providing an opportunity to the Indian society to debate intensely on issues surrounding motherhood and women’s role in family, the Hindu Code Bill discourse was an important communicative process that created an ideal pedestal for the Hindu family law reforms of the mid-1950s. Voices towards the creation of a legal backbone for ushering an egalitarian society came in conflict with vehement opposition by patriarchal orthodoxy in the social sphere, followed by the expected resultant ripples in the legislative sphere. The discourse over the contested conception of motherhood played a critical role in the foundations of family law reforms in India and in the institution of gender rights.

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chitrasinha@hotmail.com


ii Constituent Assembly Debates, April 8, 1948, page 3470.


v Sukumari Bhattacharya, op.cit., page WS-51.


xi The educational development during the British rule led to a number of socio-religious movements in nineteenth century. The Brahmo Samaj, founded by Raja Ram Mohan Roy in 1825 emphasised the need to remove deep-rooted gender injustices in religious traditions. The Samaj fought for the abolition of child marriages, removing polygamy, and promoting education for women. Under Keshab Chandra Sen in the middle of nineteenth century, the Brahmo Samaj initiated inter-caste marriage in 1862. This was the precursor to the Civil Marriages Act, 1872. The Brahmo Samaj also attempted to improve the social interaction of men and women and career for women outside home. Prarthana Samaj was established in 1867. Its members, K.T Telang, M.G.Ranade and Bhandarkar championed the cause of women. The Arya Samaj, established by Dayanand Saraswati in 1875 attempted reforms of the caste system and the status of women. The ideal of reviving Vedic social consciousness meant removal of many gender injustices that developed during the post- Vedic era. Social reform movement among the Muslims during the nineteenth century remained rather muted. However, in the late years of the nineteenth century, under the leadership of Begum of Bhopal, Sheikh Abdullah of Aligarh and Justice Karamat Hussain in Lucknow, educational opportunities of Muslim women increased.


xiv Women's India Association, founded in May 1917, was the first organization of pan-Indian character; its branches were first opened in Srinagar, Madras, Calicut, Tanjore, Bezwada and Bombay. Later, its branches were opened in other parts of India as well. The association, under the leadership of M. E. Cousins was instrumental in spearheading the women's suffrage movement and succeeded in its mission.

xv The All India Women’s Conference (AIWC), women’s rights and empowerment through legal reforms were extensively debated. In Erode, Tamil Nadu in 1931, Saraladebi Chaudhurani stressed before the delegates of the Tamil Nadu Women’s Conference that women’s rights could be attained through the sheer force of agitation. She also stressed that while men had to be forced to concede to women’s demands, at the same time there was a strong need to convince women about their own rights in society. In the twelfth session of AIWC held at Nagpur in December 1936, the standing committee of the conference drafted a scheme for introducing legislation to improve the social status of women and forwarded it to chief ministers of the new provincial Governments and to women members of legislatures. Bombay organized the seventeenth session of the conference in April 1944, presided over by Kamaladevi Chattopadhyaya and attended by 205 delegates. The AIWC conference organised an agitation in support of the Hindu Law Committee.


xxi ibid., pp. 64-65.

xxii ibid. page 22.

xxiii ibid., page 23.

xxiv ibid., pp. 54-59.

xxv Uma Chakravarty, Rewriting History: The Life and Times of Pandita Ramabai, Kali for Women, New Delhi, 1998. The study is the first serious effort to analyse ‘patriarchy’ and ‘Brahmanism’ in Indian history, according to Gail Omvedt, ‘Towards a theory of Brahmanic Patriarchy’, in Economic and Political Weekly, January 22, 2000 page 187.


xxvii ibid., page83.


xxx ibid., pp. 1605-11.

xxxi Government of India, Oral Evidence Tendered to the Hindu Law Committee, Madras, 1945, page 7

xxsii ibid., page 8.

xxsiii Constituent Assembly Debates, April 8, 1948.

xxsiv Government of India, Oral Evidence Tendered to the Hindu Law Committee, Madras, 1945, Feb 6, 1945, Bombay

xxsiv Government of India, Oral Evidence Tendered to the Hindu Law Committee, Madras, 1945 Delhi, February 8, 1945.

xxsiv Government of India, Oral Evidence Tendered to the Hindu Law Committee, Madras, 1945 OE, Delhi, Feb 9, 1945

xxsivi CA (Leg) debates, April 8, 1948.

xxsii Oral Evidence of Mr. Ganpat Rai to the Hindu Law Committee on February 8, 1945.

xli Statement of Mr. Gyan Prakash Mittal and Shri Prabhu Dayal Sharma on behalf of the Sanatana Dharma Rakshini Sabha, Meerut in front of the Hindu Law Committee at Delhi on February 8, 1945.

xlii Sunderlal Joshi’s Statement before the HLC in Bombay.

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