

Politics and Debate on Hindu Code Bill and Uniform Civil Code and the Forces of “Hindu Right Reaction”

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Abstract:

The object of this paper is to understand the context and the debates associated with the enactment of and changes in what we call as Hindu personal laws in post colonial India. It also tries to examine the nature and the kind of debate which has risen up as a natural corollary of these laws, over Uniform Civil Code and what is the meaning and purpose associated with the discourse of Uniform Civil Code for different sections in social and political arenas.

The first section deals with the emergence of “personal” laws in colonial India and the role of Orientalist discourse in the process. The second section discusses the debate on Age of “Consent” Bills in British period. The third section is on the ideas of national leaders Jawaharlal Nehru and Gandhi vis-à-vis role of women in family and society, their space in public and private spheres and above all how these two leaders, who surpassed everybody else in influencing and directing not just discourses but destiny of pre and post colonial India, perceived women as individuals. The fourth section examines the debates in legislative bodies and outside on Hindu Code Bill, Hindu Marriage Bill, and Hindu Succession Bill, the role of women’s movement and activists in the process. It concludes the paper after examining the shift in the discourse

I

Kaviraj¹ says that India is not an object of discovery but an object of invention. It was historically instituted by the nationalist imagination of the nineteenth century. This intellectual enterprise was original and distinct not in the sense that it was an attempt to counter and criticize western theories of social organization by the use of concepts and argumentative structures taken from the western theoretical discourse but it is so because the critique was attempted outside this orbit of discourse. It was in itself an acknowledgement of the distinctness of Indian discourse. By its nature, this conception of nationalism had to be homogenizing. It is like telling the story of nationalism overlooking chaos and gerrymandering in its plot structure so as to convincingly build the case of a particular kind showing nationalism arising and moving to its destiny. He adds² that the conventional theoretical models about the structure of modernity and its historical extension in the non-western world are faulty. If secular state institutions are subject to democratic decision making processes, the outcome might be quite different from what an

¹ The Imaginary Institution of India By Sudipta Kaviraj

² Modernity and Politics in India By Sudipta Kaviraj

unworried theory of secularization might expect. Modern societies are constantly engaged in devising more effective and expanded forms of collective agency. The evolution of modern democratic mechanisms provides the society with a new technique of collective will formation. When all these processes acts on behalf of the society, if only to translate its collective intentions into policy. These techniques require constant monitoring of their own effectiveness and are regularly reformed in response to perceived failures or in search of more effective solutions and that traditional Indian society was not organized around the power of the State, the British administration in Bengal could start as a revenue raising body and gradually extend its control over most other spheres of social life without overcoming or controlling explicitly the political authority of the Mughal empire. After they settled down in India, the British introduced two rather different types of ideas and practices: (i) The idea of state sovereignty (ii) The ideas of “sphere” of social life, only one of which was in narrow sense “political”. The colonial state gradually instituted an enormous discursive project—an attempt to grasp cognitively this alien society and bring it under intellectual control. Cognitive orientalism means the development of a large body of cognitively disciplined material that documented what the nature of this land was like, often created a powerful intellectual tendency in the opposite direction. Orientalist knowledge might, inside the West create prejudices against the Orient and make it appear inferior; *but* Edward Said’s suggestion that it tended to show the Orient systematically as an object, passive and tractable, to be molded by Western initiative is certainly partial and misleading. Absolutism in Europe had introduced a form of internal sovereignty dissolving all competing claims to political authority, the like of which was never seen in India. Orientalist conceptions of Indian society, which emphasized the fact that environment was basically different; made the colonial rulers withhold certain practices and modified others. Carol A. Breckenridge and Peter van der Veer sees a “crucial and peculiar link”³ between orientalist discourse and the vitality of the public sphere in India today. They say that by casting its “master-questions” in terms of what made Indians different qua Indians, and also what made differences among Indians so much more pervasive than differences elsewhere, orientalist discourse gave a “peculiar essentialist twist”⁴ to nationalist discourse in India. Their argument is that while it is of course true that “all nationalist discourse appeals to primordial images—of

³ p. 11, Carol A. Breckenridge and Peter van der Veer edited *Orientalism and the Postcolonial Predicament—Perspectives on South Asia*, University of Pennsylvania Press 1993.

⁴ *ibid.*

blood, of kinship, of soil, and of sexuality—in order to imbue the nation with the force of bodily self interest. But in those colonial sites where the orientalist discourse held sway, it made it impossible to conceptualize the nation in relation to any sort of civil society on the western model, since all social groups, all habits of thought, all traditions of politics were seen as emanation of identity and essential bodily differences.”⁵ Therefore, unlike Edward Said, they do not see nationalism as an answer to orientalism. Rather according to them, nationalism is the avatar of orientalism in the colonial and postcolonial period. They say that the term “India” in the postcolonial period refers to nation-state that has been constituted through the “dialectics of orientalism/colonialism and nationalism”⁶. Tracing the roots of orientalism they say that early orientalism developed alongside the European Enlightenment. This convergence of oriental and Enlightenment discourse facilitated the coalescing of important notions of modernity, citizenship, and rationality. India came to illustrate “the theme of the eclipse and suppression of the ‘natural light’ through superstition and ritualism, a theme that enjoyed a great popularity among thinkers of Enlightenment” this orientalist view coincided with an indigenous “Brahmanical notion of the staged deterioration of civilization to the depraved condition of the present (*kaliyuga*).”⁷ They note that the early orientalists looked for the “finer specimens” of Indian tradition. “Hastings found them in the first translation of *Bhagavadgita*, where he found “many specimens of fine morality” that coincided with the principal concerns of liberal, undogmatic Anglicans! This was clearly not only a matter of taste, but also of politics. He intended to show British public opinion the advanced state of Indian civilization to thwart the attempts of the home administration of the East India Company to usher in British common law for the administration of justice in India. “These seemingly contradictory intellectual moves provided a basis for later reformist views of what had come to be called as “Hindu” religion.”⁸ Rosane Rocher⁹ has noted that the formulation and textualization of a Hindu law and of a Muslim law created a legal discourse that changed the administration of justice in Indian society in fundamental ways. She asserts that the underlying assumption of Hasting’s Judicial Plan was that India’s cultural and religious diversity could be reduced to a dichotomy of Hindu versus Muslim law, which created a discursive framework for later colonial policy to “divide and rule”

⁵ pp. 11-2, *ibid.*

⁶ p.17, *ibid.*

⁷ p. 7, *ibid.*

⁸ p. 8, *ibid.*

⁹ p. 7, *ibid.*

Hindus and Muslims. Orientalism created a situation in which a certain kind of Brahmanical discourse which claimed timelessness and speechlessness for its doctrines came very near to the realization of its ideological claims.

Brahmanical discourse was systemized as “Hindu Law” and “Hinduism” to the extent that in the end it no longer needed actual Brahman “spokesmen” to interpret and authorize it.¹⁰

Orientalist empiricism conceived its reliance on native informants as highly problematic for the establishment of “facts.” This was already a problem for the *ur* orientalist Judge William Jones, who in 1784 wrote to his superior Warren Hastings that “I no longer bear to be at the mercy of our Pandits, who deal out Hindu law as they please...”¹¹

Now the way out of the “orientalist dilemma”, which Carol A. Breckenridge and Peter van der Veer suggest, is to remain steadfastly focused on the present, seen as a historical moment that owes itself at least in part to the very heritage of orientalism that we now seek to undo. This is something, which, we shall see later, has always been very difficult to actualize.

II

Throughout the colonial period, whenever the issue of raising the minimum marriageable age for girls came, the debate took place within a discourse, which was centred on the sexual anatomy of the female body¹². The questions that were posed sought to know what should be used as an indicator to ascertain that a girl’s body had become fit to consummate the marriage. Another important factor in the debate was whether early marriages among Hindus were weakening them as a “race” by leading to the birth of weak progenies. While the bills which were brought for legislating on it, carried the term “consent” implying that the concern was to fix the minimum age for girls at which they could give an intelligent “consent” to their husbands for sexual intercourse, yet, nowhere in the debate there was any discussion over the age at which a girl could be considered as mentally grown up enough to give her “consent”.

Mrinalini Sinha, dealing with the period of 1880-90s argues that the debate on construction of British and Indian masculinities must be understood “in relation to one another

¹⁰ p. 27, *ibid.*

¹¹ p. 9, *ibid.*

¹² pp. 226-249, *Hindu Wife, Hindu Nation—Community, Religion and Cultural Nationalism* By Tanika Sarkar, Permanent Black 2001

and as construction of each other.”¹³ She points out that “Colonial and nationalist politics in the 1880s and 1890s is best captured in the logic of colonial masculinity.”¹⁴ She underscores the fact that the politics of colonial masculinity circumscribed the emancipatory potential of nationalist politics. The Ilbert Bill was perceived to be framed as an intrusion into the domestic relations of native men. Hence, traditionalists and nationalist leaders mobilized themselves in defense of Orthodox Hindu patriarchy. She notes that the control over the bodies of the native women, provided the opponents of the Bill with a means to reclaim Indian masculinity by replacing white men as the protectors of native women. At the end of it, we find that whole episode enmeshed nationalist politics more thoroughly in the arena of colonial masculinity and reinforced the authority of orthodox leaders and practices while painting domestic social reform legislation as a threat to Indian autonomy.

To curb child marriages among Hindus, Rai Saheb Harbilas Gour Sarda introduced a Bill on 1 February 1927. After a lot of dilatory tactics, debates, dithering and amendments, the Bill which later came to be known as the Marriage Restraint Act came into force along with other matrimonial acts, forming the first part of the Hindu Code in 1955. The age of marriage for girls was now raised at fifteen.¹⁵

The Orthodox resistance to the efforts for raising the marriageable age for girls can be best gauged by a note written by Nehru in Almora jail in 1935 where he recalls how one year back from then, while he was in Benares, he came across a large procession of Hindus and Muslims, who were protesting against the Sarda Bill.¹⁶ Besides opposing the Bill, they were raising slogans of Hindu-Muslim unity. Nehru has aptly put their rallying cry as “Orthodox of all religions, Unite!”¹⁷ To get a sense of public support for the custom of child marriage, Age of Consent Committee was set up in 1928. It sent questionnaires to large number of people including leaders of AIWC. Among the questions it asked were¹⁸:

¹³ p. 7, Colonial Masculinity: The ‘manly Englishman’ and the ‘effeminate Bengali’ in the late 19th century By Mrinalini Sinha, Manchester University Press 1995.

¹⁴ p. 1, *ibid.*

¹⁵ The Hindu Code merely retained the age of marriage for girls at fifteen and merely extended it to the whole of India. After the passage of Sarda Act, and later legislations had already raised it to fifteen.

¹⁶ At that time the Bill proposed to prohibit the marriages of girls under fourteen.

¹⁷ p. 474, Selected Works of Jawaharlal Nehru Vol. 6, Sangam Books 1974.

¹⁸ Hansa Mehta Papers in NMML, questionnaire sent by M.D. Sagane, Secretary, Age of Consent Committee addressed to Hansa Jivaraj Mehta, dated 31st July 1928

- Do women in your part of the country favour early consummation of marriage for their children?
- What is the normal age at which girls attain puberty in your part of the country? Does it differ in different castes, communities, or classes of society?
- If it is considered (early consummation) as a religious injunction.
- Is on set of puberty sufficient indication of physical maturity to justify consummation of marriage?

The first question here indicates that now it had become necessary to acknowledge the agency of women on the issue and their consent had become somewhat necessary to obtain. This also shows that now the customs required the seal of legitimacy through consent for it even from women even if merely as a formality.

Hansa Mehta, while writing to the Secretary of Home Department, Government of Bombay Presidency, presented her stand as well as that of AIWC on the proposed Restraint Act. She welcomed the fact that by dropping the exclusionist term “Hindu” from the Bill will extend it to all communities but simultaneously, she wanted it to be extended to all parts of India and not just to the British territory. The demand was also to not just “restrain” but “prevent” child marriages throughout India by declaring such marriages to be unlawful ab-initio and penalising the “contracting parties”.

Looking into the writings of various national leaders at that time, we find that it had not become a major political issue even though most of the leaders had taken clear position themselves either in favour of or against the measures to raise the minimum marriageable age for girls. (Pandit Motilal Nehru, Pandit Madan Mohan Malviya, N.C. Kelkar, M.A.Jinnah and M.R. Jayakar supported these legislations.)¹⁹

One important shift that had taken place between 1880-90s when Ilbert Bill was being discussed and 1920-30s is that while earlier, the opposition against reformist measures posed themselves as nationalist, later on they gave the cry of religion being in danger. On the face of it, it seems that this was because while earlier reforms were advocated by those people of Indian intelligentsia who did not have any “command” on the society with the prospect of support from

¹⁹ p. 57 Hindu Women and Marriage Laws: *From Sacrament to Contract* By Monmayee Basu, OUP 2004.

the colonial State. But later on the political leadership, especially one which had emerged after the mass mobilization of 1920s, were somewhat sympathetic to the cause of betterment of women's position, mainly because they thought this will place them in a better position in negotiations with the colonial regime. And also the fact that Indians were getting participation in the governance and law making at various levels and State was no longer completely in the hands of British. However, besides this, the shift from "nation" to religion was also because their ideas could no longer claim immunity from scientific and humanist scrutiny in the name of native autonomy. So the only resort left was that of religion where human logic and reason has no place.

III

It can hardly be disputed that the person who influenced the Indian socio-political milieu the most during the period 1921-48 was Gandhi. At the time of his arrival on the Indian socio-political scene, the "women's question" had come to occupy a prominent place in the agenda of radicals and liberals as well as cultural nationalists. Despite all their differences, however all of them viewed women within the familial context. So they had, till then, did not conceive of any role for women beyond the realms of domesticity. Another important thing is that all the social reformers and reform movements till then, could not transcend their regions. While Gandhi was one whose actions and words worked throughout the country. The liberal and religious reform leaders till then, as stated earlier, relied heavily on the support of the colonial government and their tools for improving the condition of women were education and legal measures. So they looked upon the colonial state as an ally and not as an opponent. With the arrival of Gandhi on the scene, all this went for a change. He conceived the idea of active political participation by women, which till then, was not envisaged. Unlike in the past when the nationalist struggle and demands for women's liberation were seen in a dichotomous relation, Gandhi tried to weave them into a new relation. He said, "To postpone social reform till after the attainment of Swaraj is not to know the meaning of Swaraj."²⁰

A general reading of the Gandhian work is enough to indicate that he believed that there was a basic difference in the social roles and functions of men and women even as they were complementary. He held the traditional view that the woman's place was in the home while man

²⁰ p. 343, Indian Nationalism and Hindu Social Reform, OUP 1964

was the bread winner and had to work outdoors. For a woman, the primary duties were service to her husband, his family, and the country. He said, “I do not believe in women working for a living or undertaking commercial enterprises... in trying to ride the horse that man rides she brings herself and him down.”²¹ However, this is not to say that he considered women to be inferior to men. In fact, he believed them to be superior to men, as they possessed moral strength while men had physical strength, which was brutal.²² His ideas on women’s roles stemmed from his high caste, middle class Hindu upbringing within a patriarchal context. He worked within a traditional framework using traditional idiom. Even while women were expected to be initiators of social reform, they were to do so only as extensions of their familial roles. This may be the reason why he could win the confidence of the male guardians of his female workers and associates. They were reassured that their women will not question the validity of their traditional roles within the family. Gandhi was a traditionalist is also evident from the fact that he did not question the caste system while attacking untouchability.

Brahmanism I adore, I have defended Varnashrama Dharma. But Brahmanism that can tolerate untouchability, virgin widowhood, spoilation of virgins, stinks in my nostrils. It is a parody of Brahmanism. There is no knowledge of Brahman therein.²³

Similarly when he advocated that the evil social practices affecting women should be done away with he did so without conceiving of changes in their roles and eventually in the system. He looked at women and their problems within the traditional framework of a husband-wife relationship. His view on marriage was:

Marriage is a sacrament. The union not only of bodies, but also of souls... love is possible only once in one’s life time and only in marriage... it is also a fence that protects religion... Once marriage occurs, then man and woman become one in soul.²⁴

²¹ p. 206, Collected Works of Mahatma Gandhi Vol.71, 1940

²² p. 142, The Life of Mahatma Gandhi By D.V. Athalye, Swadeshi Publishing Company 1923

²³ p. 142, Gandhi, *op. cit.*, Vol. 34, 1927

²⁴ p. 364, *ibid.*, Vol. 30, 1926

Whenever Gandhi criticized the contemporary Hindu customs and practices, he always conditioned it with his concern for the sanctity and security of home and family. His idea of women liberation was to rethroner her as “the queen in the household”²⁵ Gandhi provided marriage and home a religious sanctity within the framework of a national ideology. He had no problems in accepting and advocating equality between the sexes and did not consider one to be inferior or superior yet, he firmly demarcated their zones.

Gandhi completely denied the existence of female sexuality. And when he could not do so, he accepted it after attaching illegitimacy and shame to it. All his postulates are based on this very assumption. He said,

The contemporary form of marriage bases itself on lust and sexual passion. In this form woman becomes the object of man’s lust, a tool for his gratification. Because of social norms, a woman cannot say *no* to her husband who by inflicting himself on her makes her a prostitute. It is only when the woman learns to say *no* that she can really become free. Because what she considers as her weaknesses are not weaknesses but her strengths. Woman is not a prey to sexual desires. It is easier for her to to enforce self-restraint and thus she can refuse to become a doll in her husband’s hand.²⁶

His views on widow remarriage are also based on the same premise. Rather than thinking of equality for woman in a sexual relationship he advised sexual restraint and self denial. His views on widow remarriage illustrate this well.

Impatient reformers will merely say that remarriage is the only straight and simple remedy for this bane. I cannot say so... I too have a family of my own... There are many widows in my family, but I can never bring myself to advise them to remarry and they will not think of doing so either... The real remedy is for men to take pledge that they will not remarry.²⁷

A child bride cannot understand this meaning of marriage and therefore she should not be married when young and if married and widowed should be remarried. A grown up widow who has been married comprehends this meaning of marriage and therefore should constrain herself

²⁵ p. 80, *ibid.*, Vol. 48, 1931

²⁶ pp. 157-8, *ibid.*, Vol. 52, 1935

²⁷ pp. 319-21, Vol. 18, 1920

from getting married. It is only when a widow cannot restrain herself, that she should have the freedom to remarry for it is better to marry openly than to live in sin.²⁸

Now coming back to his political movements, another way to look into the aspect of women's participation and their mobilization in political struggles is that while it is true that he brought women out of the walls of domesticity to the streets for protests and picketing yet it was more that he brought the political struggle itself within the secure walls of home. "Participation for the women in the nationalist awakening means spinning at home."²⁹

Jawaharlal Nehru writes: "I hold rather definite and also strong views on subjects relating to the women in India."³⁰ Unlike Gandhi, for Nehru, the natural culmination of women's participation was the beginning of a greater struggle for finding a proper identity in the Indian social milieu and enjoying equal rights with men. He was the only leader who saw it as inevitable and in his own way tried to herald it. He said during the debate on Hindu Marriage Bill in Lok Sabha, "I have the greatest admiration for the women of today. I have faith in them. I am not afraid to allow them freedom to grow because I am convinced that no amount of legal constraint can prevent society from going in a certain direction. And if you put too much legal constraint the structure breaks."³¹ The social reformers of the 19th century by projecting the examples of Gargi and Maitreyi initiated a long tradition of myth making about the ancient Hindu women not being subjugated. There was a concerted attempt by reformers to show that women in ancient India enjoyed gender equality particularly in the domain of religion and spirituality. Judged against this background, Nehru's open critique of many of these gender constructs seems remarkable. The repeated references to the pristine purity of the Hindu shastras and the exalted position given to Sita, Savitri, Damyanti and others irritated him. Nehru used to point out that they had lived in a particular age and served certain social compulsions that were irrelevant in the present times. The silent martyrdom of Sita and the complete internalisation of her anguish were certainly not qualities that Nehru sought to inculcate in women. he lashed out

²⁸ pp. 493-4, *ibid.*, Vol. 30, 1926

²⁹ p. 328, NMML Publication, 2001

³⁰ p. 676, *Selected Works of Jawaharlal Nehru*, Edited by S. Gopal, Vol. 8, Orient Longman 1972

³¹ Lok Sabha Debates 1955, Vol IV, Part 2

strongly against the passive acceptance by women over the years, of man-made laws which were intended to shackle and enslave women and treat them as chattels.

Nehru while engaging in the dialogue on feminine qualities was on a different wave length altogether from the colonial discourse of his times which regarded the Orient, as also India, as effeminate, emasculated, weak and powerless, to be resurrected by the manly Occident. His take on this was:

A great deal has been said in the past about the Occident and the Orient... I myself have not understood this and all that has been said. I have not appreciated them...

It is not the nature of the Occident and the Orient to differ but the facts of industrial development and technical progress have naturally affected tremendously western civilizations and it is affecting the eastern civilizations also. Of course, there is the time-lag between them. the difference is not so much between the Occident and the Orient but as between the centres of civilizations, between areas that have often enough somewhat different psychological background.³²

Nehru strongly condemned men for having exploited women through the centuries. He took upon himself the twin responsibilities of exposing the tyranny of male dominance and at the same time encouraging and educating women to strive for equal conditions. As he explained while addressing the All India Women's Conference "I would prefer to call you comrades but I have not done so firstly, because I do not know whether you like being called so, and secondly, because I do not know whether you deserve it."³³ One of the aspects of the Leninist Revolution, which had impressed Nehru most, had been the equalizing effect it had on women. "Whatever other failings of the Russian woman of today may have, she is certainly not a chattel or plaything of man. She is independent, aggressively so, and refused to play second fiddle to man."³⁴ The problem with India, Nehru analyzed was that Indian civilization, customs and laws were all "made by man and he has taken good care to keep himself in a superior position and to treat women as chattel and a plaything to be exploited for his own advantage and amusement."³⁵

³² Address to the Consular Corps, Calcutta, 14 January 1949, p. 245, The Essential Writings of Jawaharlal Nehru Vol. II, Edited by S. Gopal, Uma Iyengar.

³³ p. 529, Gopal, *op. Cit.*, Vol. 10

³⁴ p. 218, *ibid.*, Vol. 2

³⁵ p. 220, *ibid.*, Vol. 6

In a deliberate discard of the accepted stereotype for women, Nehru declared that marriage was not to be regarded as the only goal in life. he exhorted women students to read Ibsen's Doll's house to make them realise how they had been steadily indoctrinated into believing that "while man was the bread winner, woman's place was in the home and her ideal should be that of a devoted wife and nothing more."³⁶ Even in this sole "profession of marriage" in which woman was trained, he warned that she would not get an equality of status. She would merely be "the devoted help-mate, the follower and the obedient slave of her husband and others."³⁷ Nehru cautioned against entering into matrimony merely as a social requirement. He said, "Marriage is an important thing in life. It may make or mar one's life. And yet marriage is something smaller than life. Life is a much bigger thing."³⁸ Displaying rare maturity for his twenty-three years, he had written frankly to his mother when she was match-making for him, "Would you like me to marry a girl who I may not like for the rest of my life or who may not like me? Rather than marry in that way, it would be better not to marry at all."³⁹

His view on family and its purpose also differed starkly with that of Gandhi. In a letter to Krishna Huthersing, he wrote,

I do believe that family as a unit is important, especially the smaller family, and fulfils a psychological need. It will survive. But the economic bonds that tie up a large number of persons in a joint family tend to become real bonds, helping the individuals often but also suppressing him and preventing growth. Where a common outlook on life is lacking, they become nuisance to all concerned and a constant source of irritation.⁴⁰

In a letter to Charan Singh, who had asked for making statutes for encouraging inter-caste marriage, he replied,

Marriage is a very much a personal affair and we are trying to make it more and more a personal affair and to take it out of the old ruts of conventions and customs.

³⁶ p. 361, *ibid.*, Vol. 3

³⁷ p. 646, *ibid.*, Vol. 11

³⁸ *Ibid.*

³⁹ pp. 96-7, *ibid.*, Vol. 1

⁴⁰ p. 672, *op. cit.*, Gopal and Iyengar

We have to create conditions otherwise. The special marriage act is one such step... I cannot bring myself to think of the choice of marriage being controlled by legislation or by inducements.⁴¹

To put it precisely, the basic difference between the Gandhian and Nehruvian philosophy seems to be that while the former was premised on subjugation of the individual to the societal norms in the interest of maintaining an idealized and purified form of traditional institutional construct, the later stood for unhindered individual rights.

IV

While dealing with Rukmabai case Sudhir Chandra says that in the last quarter of 19th century, there were three discourses—the orthodox or reactionary, the imperialist, and the reformist. He adds that both the orthodox and the imperialist discourses made a show of reverence and concern for women but simultaneously employed stratagems to avoid being pinned down to the actualization of that reverence and concern. There seems to be a thread of similarity that runs through the colonial and the post colonial States. This is because while the Colonial State did not want to upset its own apple cart by infuriating and inviting the wrath of the obscurantist and traditionalist native intelligentsia by poking its nose into such issues and it also helped them at one stage in setting the discourse of theirs being a civilizing mission, which required the backwardness of the colonized not to be done away with. And the Post Colonial State was working under the constraints of a democratic set up. And as Sudipta Kaviraj points out, the results of the modernization endeavored while operating in a democratic set up are bound to be unique seems very much true in this context. Different ideologies, concerns, anxieties, fears, and aspirations acquire their own agencies if they agree to work through this system. Sudhir Chandra sums up the whole issue by saying, “The dialectics that binds law, public opinion and social change in an interpenetrating causality is both defiance and conformance. And in the dramatic nature of the two gestures, their unpredictability, appears the play, however vital or limited, of individual volition in the operation of this dialectics”.⁴² This however been said in another context, appears to be applicable verbatim in the context of the passage of Hindu Code Bill’s various provisions one by one in postcolonial India.

⁴¹ p. 140, *ibid.*

⁴² p.6, *Enslaved Daughters—colonialism, Law and Women’s Rights* By Sudhir Chandra, OUP 2004

Partha Chatterjee⁴³ observes that the philosophy of Tagore, Gandhi, and Nehru ultimately triumphed over that of Bankimchandra in deciding the vision of nationalism but it's also equally true that even as the former succeeded in getting an upper hand, the latter could never be marginalized and isolated or sent into complete oblivion. It operated and still operates at different levels through different social, political and state institutions. The same applies to the social counterpart of this political ideology. The national movement had an ambiguity on social agenda. Since the issue was left open, when a decision was sought to be taken to decide it in some measure through political majority, it was a given that there will be a strong reaction.

Since the late 1930s and early 1940s, there were demands from women activists for reform in marriage laws but due to the War and the fact that those who would have created a furore over it were at the forefront supporting the imperialist war did not allow much headway on it.⁴⁴ “The All India Women’s Conference supported the idea of change in Hindu law as it pertained to marriage, inheritance etc. when the government appointed the Rao Committee in 1941 and it toured the country to take evidence and made its recommendations in 1943”⁴⁵

Hindu Code Bill was first brought in the Constituent Assembly for discussion. Other than heated debate, nothing else could be achieved there. On 17 September 1951, the provisional Parliament resumed consideration of it. Realizing the strength of opposition to it as well as mostly adverse reactions from the press and the State leaderships, the government tried to get only a few of its provisions passed in the provisional Parliament but even that did not happen. Finally, two of the most important Bills, forming the original Hindu Code Bill—Hindu Marriage Bill and Hindu Succession Bill were passed in 1955 and 1956 respectively. The later, for the first time gave daughters a share in their father’s self acquired property and gave women absolute right to their self-acquired property.⁴⁶ The main issues debated were those of making polygamy illegal, provision of divorce for even marriages solemnized as sacrament and property rights for women.

⁴³ Nationalist Thought and the Colonial World By Partha Chatterjee 1985

⁴⁴ pp. 23-7, Renuka Ray’s article in Roshni, December 1948, Annual Number, Journal of All India Women’s Conference

⁴⁵ p. 186, Communists in India’s Women’s Movement 1940-1950 By Renu Chakravarty, People’s Publishing House Dec. 1980

⁴⁶ p. 169., Gopal and Iyengar, *op. cit.*

The expressed refusal to bring a uniform civil code was born out of the anxiety to avoid admitting that the Indian social structure was suppressive and exploitative towards women in its very character and completely denied agency to them. The reason for the idea of piece by piece legislations to make changes in the Hindu civil laws succeeding and the failure to pass a wholesale kind of measure in the form of Hindu Code Bill is perhaps the same which makes aspects of Hindu laws amendable and non-Hindu laws especially Muslim personal laws sacrosanct for the post colonial state. So rather than making the principles of justice and equality as rules, exceptions were made. This implied that nothing else but just a few wrongs or outdated things needed to be modified or changed here and there. The argument for not interfering with the socio-religious traditions and laws of the religious minority in the aftermath of partition which could have both alarmed and antagonised them against the Indian state appears to have a sound logic. But what if we question it?

We find that in the circumstances, the post-colonial government was forced to follow the British legacy of non-interference with the personal laws of different communities. But why did the fear of polarising people along well defined large communities did not come to its mind? There was great opposition from the forces of Hindu right reaction to the Hindu Code Bill and Hindu Marriage Bill etc. yet efforts were made. Did government over-estimated the opposition and consequences of interfering with non-Hindu communities' personal laws? Was it based on thoughtful estimate or on imagination alone? The option of getting a real feel of it by coming openly with such an idea unadamtantly while keeping the option of dropping it altogether open was not exercised. Was there a total lack of progressive elements in non-Hindu communities? And if those who were progressive were not considered as part of their communities by the reactionary guardians who immensely outnumbered them then was it any different from Nehru's and Ambedkar's positions within the "Hindu fold"? People like Nehru and Ambedkar were made to feel like aliens because of their ideological and philosophical persuasions. But most importantly, was not it an inadvertent admission on part of the state that to some extent it did consider itself as a Hindu State. Inadvertent because the intention was not this but rather it was to avoid going for a revolutionary social change which could have explicitly meant that the Indian social construct at the time was unjust. In constituent assembly's debate on Hindu Code

Bill, I found that one member supported the bill saying those changes were long over-due as British brought about changes only in Christian laws as they were themselves Christian. While it may be true but to mention this in the debate and posing it as the reason for supporting the Hindu Code Bill has other connotations as well. The quoting of scriptures by even those who were not “conservative” and favored changes may not be just to pacify and convince the opponents but it also betrays their thinking that the “Indian philosophy” in its uncorrupted and pure form inspires “man” for higher ideals and there is nothing in it which goes against the spirit of fair treatment of women. While emphasizing this, these people would not examine if this fair treatment leaves women at the mercy of male relatives or how much of the women’s agency, if they had any was not subject to the seal of patriarchal social order.

In the constituent assembly debate, while making a case for the inclusion of provisions for divorce, the then Law minister Ambedkar argued that divorce was already in vogue in more than 90% of Hindu population and only among less than 10% “regenerate” caste Hindus, it was a taboo. So, in case of a general law, it was logical to make the practice of 90% as the rule for all rather than imposing that of the 10% on the rest. He also pointed out that the *shastras* which upper caste people claimed to follow like *Narada smriti* and *Parashar Smriti* recognized right of women to divorce but later on “somehow, unfortunately, unnoticed, unconsciously, custom has been allowed to trample upon the text of the *shastras* which were all in favour of the right sort of marital relations”⁴⁷. He argued that the changes, which were being proposed, were just, reasonable and based on the experience of the world as a whole and had the backing of *shastras* as well. The argument against this logic was that rather than going by the number of people following certain kinds of customary practices, the logic should be based on the consideration for the good of the society. The members opposing the bill said that although divorce was made available just as an option for the Hindus. And it was left to their discretion whether they decide to opt for it or not but yet it was same like making alcohol available to people and then saying that it was up to them to decide whether they want to become drunkards or not. According to

⁴⁷ Discussion on the Hindu Code in the Constituent Assembly after return of the Bill from the Select Committee (11th February 1949 to 14th December 1950) as available online

these participants in the debate, although it could not be denied that ancient “Hindus” practiced divorce yet later, as the need to keep the family united arose, it was stopped completely. In addition, they also suggested that the proposed code could provide for two kinds of marriage—sacramental and civil. And in only one of them there should be provision for divorce and not in the other one. Therefore, those who marry under the sacramental form of marriage would not have the option of getting divorce. Ms. Sucheta Kriplani tried to allay these fears by saying that the Code provides for only just and reasonable grounds based on which divorce could be sought. Moreover, she points out that Hindu social tradition in itself is such that people would not rush to get divorce on flimsy grounds. To back her claims, she said that at those places in India (Baroda, Travancore, Cochin and Malabar) where people already had the option of divorce, not many people actually went for it. Therefore, she asserts that the fear that the entire family system would collapse because of people rushing for divorce is totally unfounded.

The debate on this particular issue betrays the skeptical view of the members vis-à-vis giving individuals especially women, their own agency to walk out of a social institution which till then was upheld as a life long bond by the tradition. The woman speaker referred to addressed these apprehensions by emphasizing that women were not demanding anything which was not in the interest of the whole society and this code was a merely an effort in the direction of removing the ‘defects’ which had crept into the Hindu society over a long period of time. So Hindu society was bound to benefit as a whole. The special efforts made by the proponents of the bill to draw home the point that since Hindus have their own socio-religious morals, therefore the institution of marriage would not suffer the fate it was supposedly suffering in the West, betrays the operation of the orientalist discourse. Therefore even as Ambedkar talked about the “experience of the world as a whole” to argue in favor of the bill, yet simultaneously it also becomes necessary to assert that the entire Western experience was not going to be replicated in India. Because India has its own peculiarities and it was not desirable either.

The lack of trust on individual was so great at the time of the debate that some members even suggested for the judges the job of a counselor for the people who will come to them seeking divorce. It was suggested by giving example of a particular judge in US that rather than granting divorce in a haste, laws should be such that at first the persons who would come to courts for divorce should be instructed to go back and think for a few months and only then they

should be let to decide if they still wanted divorce. The idea of being different from West and consciously acting to maintain it and attending to the social good subjecting individual will and rights is also evident from otherwise ‘unorthodox’ and ‘progressive’ person like NV Gadgil. He while admitting the fact that it might be a laughable thing to make a divorce law without including incompatibility of temperament as one of the grounds of divorce, yet he would not support such a provision. He supported divorce in his speech on the assumption that “After all, just as marriage has an individual aspect, it has also a social aspect. If the two spouses do not agree, then the bickering and the bitterness and the lack of harmony is not confined merely to the precincts of the family but it has wider application and effect, and society and the general atmosphere roundabout also suffer.”⁴⁸

One interesting thing in this whole debate on the provision of divorce is that while there were some members who were opposing divorce saying that uneducated, simple women might become easy targets when their husbands get educated young ladies. On the other hand, some members were categorically saying that they would not support monogamy without the provision for divorce! Other than Sucheta Kriplani, no other women speaker spoke on divorce in a specific manner. But not one among them opposed the provision. All that they wanted was to make the conditions for divorce stringent. Even as male members were expressing the fear that women will be more vulnerable to divorce than men, yet not one woman member opposed it.

Among the reasons for the failure to pass the Hindu Code Bill in the Constituent Assembly/Provisional Parliament, according to the newspaper editorials of that time, was Ambedkar’s “anti-Hindu”⁴⁹ diatribes during his speeches. His unabashed criticism of Brahmanical patriarchy provided the opponents with the opportunity to tar the Bill as anti-Hindu. Ambedkar equated the gender oppression and caste oppression by Brahmanism as stemming from the same ideological framework.⁵⁰

After all the efforts to pass the Hindu Code Bill, including the last ditch attempt to get some portions of it passed in the form of Hindu Marriage Bill just before the end of the tenure of the Provisional Parliament, it was decided that it will be safer to go in a piecemeal fashion. A

⁴⁸ Discussion on the Hindu Code in the Constituent Assembly after return of the Bill from the Select Committee (11th February 1949 to 14th December 1950) as available online

⁴⁹ Editorial in The Hindu, Madras september 21, 1951

⁵⁰ pp. 334, Writings of Dr. B.R. Ambedkar Vol. 13 Edited by Vasant Moon

series of four major pieces of legislation were passed in 1955-56 and these laws form the first point of reference for modern Hindu law: Hindu Marriage Act (1955), Hindu Succession Act (1956), and Hindu Minority and Guardianship Act (1956). A lot of watering down in the provisions of the original Hindu Code Bill had to be done to get the approval for it even within the ruling party. Hindu Code Bill was allowed to lapse after its introduction in the Constituent Assembly and Ambedkar resigned as law minister citing what he saw as the lack of commitment on part of Nehru.⁵¹ However we find that those who opposed the Hindu Code Bill saw it as Nehru's personal agenda rather than as his party's political one. Hindu Mahasabha, Jan Sangha and Ram Rajya Parishad put up a joint candidate against Nehru in the Lok Sabha elections of 1952 and turned it into a sort of referendum on Hindu Code Bill.⁵²

The situation in the first Lok Sabha was different from that in the constituent assembly as unlike in constituent assembly, in Lok Sabha the membership was not restricted to opulent classes and the Law Minister V.G. Pataskar was a Brahmin himself while Ambedkar was not. Therefore, he was more acceptable as a "modern Manu".

In the first Lok Sabha, Law Minister Pataskar while tabling the Hindu Marriage Bill said that the main questions involved were: (i) the abolition of caste as a necessary requirement of a valid marriage (ii) enforcement of monogamy and (iii) divorce or dissolution of marriage on certain grounds. We find that there was no objection to the first point as it was not new⁵³ and also because it was seen as in conformity with the effort for Hindu consolidation. But, the second and the third were vehemently opposed. Pataskar argued the case for the Bill saying that polygamy was on its last legs as a result of the social and economic changes in the society and monogamy had become a normal feature of society. So his argument was based on the redundancy of polygamy and not on its rational justification on the grounds of equality of sexes. He said that ancient law giver Manu did not mean "religion" by *dharma* and that he emphasises the importance of *sadachar* and *swayascha priyamatmanah* also besides Vedas or smritis. Thereby meaning that the Bill was in conformance with the norms of good conduct envisaged by Manu. To bring home the point that it was mainly a measure to codify the scattered Hindu Laws, he said that one seer was followed by another as the ancient law givers—Manu—Narada—Brihaspati—

⁵¹ p. 159, Jawaharlal Nehru—*A Biography* Vol. 2 By Sarvepalli Gopal, OUP 1979

⁵² pp. 159-60, *ibid.*

⁵³ Hindu Marriages Validity Act was passed in 1949 giving legal validity for inter-caste marriages.

do not say the same things. Not only this but even within a single text of an ancient law giver, he said, we find that what has been stated at one place gets contradicted at another. He informed that even British tried to codify the Hindu laws. Pundits who among themselves differed many times assisted European judges in this job. Therefore, he added, the then present laws were nothing but judicial decisions from region to region lacking uniformity. On the question of divorce, like Ambedkar, he too pointed out that it was allowed in more than 80% of the population by the prevailing customary laws.

We find that the concern of Law Minister was to avoid giving the impression as much as possible that the Bill he was proposing would herald radical changes in the Hindu Laws. It is also notable that the legitimacy for it was sought on the ground that it did not contain anything repugnant to the scriptures.

The most vocal and well articulated opposition to the Bill came from Hindu Mahasabha leaders V.G. Deshpande and N.C. Chatterjee. V.G. Deshpande alleged that the proposed law militated against the constitutional guarantee of equal treatment by law as it pertained only to the marriages among Hindus and that the government's intent to bring equality was shying to liberate Muslim women from "rampant" polygamy. He said that the Bill was an infringement into the rights of the Hindus to practice their faith as among Hindus, marriage was one of the 16 *sanskars* and the obligation to observe *pati vrata dharma* was mutual as male is also supposed to observe *patni vrata dharma*. He said that getting a male progeny is the basic reason behind Hindu marriage. The inference that can be drawn from this is that since it was believed that the sex of the progeny was decided by woman's body, so in case, a wife was not able to give birth to a male child, then the man would not be able to have a male child as polygamy was getting prohibited by the proposed Bill. He warned the government that the Bill would ruin the institution of family itself. "Allowing divorce will ruin the family life. In US out of 2.5 marriages, 1 ends in divorce... In Bombay Presidency (where divorce was legally an option), the ill effect of monogamy is very much evident. Men divorce their wives if they are inflicted with a disease etc... Many upper class men have left and many will leave their present wives if they find more sophisticated women."⁵⁴ Questioning the very reason for bringing he argued that social reforms are done only when people want it but majority opinion in the country was opposed to it.

⁵⁴ Lok Sabha Debates 1955, Vol. IV, Part II

Linking the question of identity with the proposed changes envisaged by the Bill, he said, “Hindu *Stritva* has a glorious history of jauhars which have challenged the invaders and conquerors... Nomadic invaders from Germany could destroy the Roman Empire because their women observed *pativrata dharma*.”⁵⁵ Hence “*pativrata dharma*” was an important requisite for the survival of Hindudom. And the Bill, by making provisions for divorce and giving agency to woman, independent of man was undermining this ethic. The centre of his arguments it seems, is the logic that a secular State does not have the right to legislate for one particular community, on matters that are considered as part of religious practices and customs. N.C. Chatterjee objected to the Bill alleging that the ruling party did not mention in its election manifesto. So it has not got the mandate to pass this legislation. As we shall see later, this argument for the lack of mandate was also pointed out by those who opposed the Hindu Code Bill saying that since Provisional Parliament was not directly elected by the people so it did not have the right to legislate on the issue. Chatterjee challenged the government to bring a Uniform Civil Code which will also be applicable to Muslims. Rejecting any need for radical changes in Hindu Laws, he said, “Indian society is not petrified. Hindu civilisation has yet to give a lot to the world. It is not right to have a revolutionary measure, a radical measure, which touches the roots of civilisation of India. (Present) Personal laws have stood the test for thousands of year.”⁵⁶ He quoted Sister Nivedita to refute the charge that the Hindu women are oppressed in marital relations—“ The so called tyrannised and tortured Hindu women is as near perfection as any human being can be. Once a wife, always a wife, even though the bond be shared with or remain only a name. The other man should be ready at all times to go forth any path, even that of death as companion of her husband, those things constitute the purity of wife in India. Purity in every one of its forms is the constant pursuit of Indian life.”⁵⁷ Like other opponents, he too based his aversion to the ‘enforcement’ of monogamy on Hindus saying it would be detrimental to the interest of the women themselves. “Monogamy law is not in the interest of women as men get “newer”, “fresher”, “loveable”, “agreeable” companions at an advanced stage of life and get rid of their old wife.”⁵⁸ (All quotation marks are mine.)

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

The opposition to the provision for monogamy came out of the apprehensions of chaos, which they thought would prevail as a result of 'natural male desire' to have better or more than one wife 'in possession'. But since this 'want' itself was not to be questioned, so the concern for the 'unsophisticated' and 'simple' women who could be divorced or tortured was conveyed. Another fear was that with the women getting agency in deciding the fate of their marital relations, they may rebel in their own interest and go 'astray' thereby ruining the stability of patriarchal family structure and society. The concept of 'good woman' and 'bad woman' was also working as is evident from the speech of a member Nand Lal Sharma who said that those women who put on lipstick and go to cinemas from early age, will not mind getting divorce from their husbands as they can take to other resorts in the absence of a home and husband.⁵⁹

The main focus of the orthodox and reactionary forces, here as well as elsewhere, as we will see later was, to somehow shift the discourse from that of gender equality to that of uniform laws for all communities.

It was left to the women members to reply to the charges made by the members of Hindu Mahasabha and Ram Rajya Parishad. The most radical voice seems to be that of Subhadra Joshi (of Congress?) who said that the women will have to write new *shastras* if the opposition would continue to come in the name of them. She rhetorically said that those who were seeing their religion in danger should first look into the plight of Hindu widows and their exploitation by the torchbearers of *dharma* and *shastras*. She said that the concern for the institution of marriage begets no merit as "the system has become like prostitution"⁶⁰ as women have to enter into marriages despite knowing how oppressive in-laws and husbands would be only because they were economically dependent, did not have property or skills and knowledge to earn a living. There was no response to her retort that, "Those who want same laws for Muslim women on the grounds of equality, should first talk about equal property rights for their sons and daughters"⁶¹ CPI member Renu Chakravartty took a different stance on marriage and said that the women members looking at the Bill from "feminist" point of view think that as if marriage is an anti-woman affair⁶². (Quotation mark is mine.) She also questioned the stereotypes about women's education as propounded by some speakers saying "Hindu Mahasabha and V.G. Deshpande

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

think that educated women are those who go to seduce men. This is like putting a premium on ignorance and then saying ignorance helps virtue.”⁶³ Sucheta Kriplani while calling it a “halting and half hearted measure” said that progressive people’s approach should be such that it succeeds in winning over the support of everyone including opponents. She urged the government to bring in a Uniform Civil Code even as she acknowledged “the difficulty of the government on the issue”. She however based her arguments in favour of the Bill as in the interest of the family where the familial role of woman as mother is the centre and thereby, if this centre’s position is strengthened then it serves the whole orbit.

One of the main anxieties as stated earlier which was perhaps fuelling the opposition was the concern for joint family system which, they believed, had great utilitarian value. It provided even non-earning male members with economic security and allowed them to start their family without bothering for their meals. Acharya Kriplani mocked this excess concern for joint family system saying “Tyranny over women is really the tyranny of the joint family”⁶⁴

During the debate on Hindu Succession Bill, the main argument of opposition was that it went against the age old family system of the Hindus where the liability for earning and property maintaining rested with men. It was said that the son keeps the hard earned money of his father as a trustee for the benefit of the entire extended family and if the daughter would be given a share, it would be lost to her in-laws family in practice. The same people who resented interference with the custom of dowry, said that women will be tortured and pressurised to get share in her father’s property by her in-laws. They also argued that it was unjust for the sons as while they will get property only from their father’s side, the daughters in practice, enjoy the property of their marital home as well.

The opposition was premised on the belief that women neither have the need nor capacity to maintain property.

There was a great deal of opposition from within the government itself to the Hindu Code Bill. The response of erstwhile Gandhians varied from complete support for any radical measure to complete hostility. While Acharya Kriplani, a Gandhian, stood in support, Rajendra Prasad did

⁶³ Ibid.

⁶⁴ Ibid.

his best to scuttle the move. In a note⁶⁵ written to Nehru on 14 September 1951, he questioned the mandate of the Provisional Parliament to pass legislations of such measures, not on legal but ethical grounds as it was set up with the purpose of making only a Constitution. He objected to the fact that it was interference into the personal law of only one community and that proposed changes in the property laws will bring in strangers on the family seen demanding share because unlike Muslims, Hindus do not marry cousins. So this would lead to litigation and nothing else. He also pointed out that the collapse of joint family system would leave old and disabled in a perilous situation and only their near relatives would be burdened with their care. He also underlined the strong public opinion against it. He conveyed that he wanted to observe the day to day proceedings on the Bill and even if it would be passed, he would examine it on its “merit” in exercise of his duty as the President. Nehru’s reply was

The President has no power or authority to go against the will of Parliament. The question of the competence of the present Parliament was raised in Parliament itself and, after much discussion, the Speaker gave a ruling on the subject. The Bill is a very moderate measure of social reform and is not revolutionary at all. In fact, those who stood for the bill are fairly disappointed because of its moderate character. It is merely an effort to codify the expansive and diverse Hindu laws.⁶⁶

On the matter of adverse public opinion, he wrote:

It is true that when any social or economic changes are proposed in an existing structure of society, there are always some elements, which are strongly in favour of them, and some opposed to them very strongly. No reform can take place if this opposition is considered to be an adequate bar to change. The mere fact of long-established static conditions can hardly considered an argument for no change, even though facts otherwise warrant it.⁶⁷

Prasad’s ideal of “Indian womanhood”⁶⁸ was grounded heavily in Indian tradition and ideal woman for him was perhaps a rural woman who looked after her home and family with

⁶⁵ pp. 292-7, Dr. Rajendra Prasad: Correspondence and Select Documents, Edited by Valmiki Chaudhary, Vol. 14, Allied Publishers Limited 1991

⁶⁶ p. 112, *op. cit.*, Gopal and Iyengar, Vol. 2

⁶⁷ p.113, *ibid.*

⁶⁸ p. 292, *op. cit.*, Valmiki Chaudhary, Vol. 18 (Note for Delhi Women’s League)

affection.⁶⁹ And perhaps it seemed to him that the proposed Hindu Code Bill was not in the interest of such women.

Going back to Nehru, we find that throughout the period of debate on Hindu Laws, he maintained a consistent stand on the issue even as it cannot be omitted that the measures were watered down for the sake of pragmatism/political expediency. As Reba Som puts it, The voluminous debates on the Hindu Code brought into public focus a broad spectrum of ideas on social issues. An analysis of the dominant mentalities is crucial for an understanding of how Nehru had to dilute substantially his original position, resulting in a set of legislation which was more symbolic than substantial in character.⁷⁰

During the Lok Sabha Debate on Hindu Marriage Bill, on 14 September 1954 Nehru said,

I do submit that this extreme reverence shown to what is called personal law seem to me completely misplaced, whether it is the Hindu Personal Law or Muslim personal law or any other. In fact, it means that you are extending the sphere of religion to all kinds of minor and temporary and changing situations in society. In the course of last two or three hundred years; Hindu law became rigid and static. It was not so earlier.⁷¹

Two days later, in a speech in the same house, he said,

Hindu society is so wide, so broad-based and so various that anything can be said as against the basic contentions and ideas of Hindu society.

The house knows that the customs have grown up under which different standards of morality are applied to men and women.

Some people say that if we have divorce by mutual consent, the husband will exploit the wife, will kick her out and force her to give consent. It is a possibility; it may happen. I do not think it will happen if you give time. If the husband does want to behave it that way, the sooner the wife is rid of him, the better.⁷²

The press was also not with the all out endeavor by the government to pass the Hindu Code Bill and it was ridiculing it saying that despite public opposition, government's adamancy on the

⁶⁹ p. 348, *ibid.*, Vol. 17 (Note for All India Women's Conference)

⁷⁰ p. 171 Jawaharlal Nehru and Hindu Code: A Victory of Symbol over Substance? By Reba Som in *Modern Asian Studies*, Vol. 28, No. 1 (Feb., 1994)

⁷¹ p. 141, *op. cit.*, Gopal and Iyengar, Vol. 2

⁷² p. 143, *ibid.*

issue was just because it had made it into a “prestige issue” due to fierce resistance. *The Hindu* wrote on September 20, 1951, three days after the Provisional Parliament started to reconsider certain provisions of the Hindu Code Bill:

Although shortness of time was pleaded as the main reason for the change in government’s policy, there is no doubt that government have responded though only partially, to the public opinion against the Bill. Why they desire to proceed with only the marriage and divorce clauses of the Bill is not clear unless it be considerations of prestige coupled with the anxiety to salvage as much out of the Bill as possible.⁷³

The paper also carried detailed news reports about local Madras leaders opposing this move of the government saying when there was already provisions for divorce in the state acts there was no need for central legislation on the issue. The local leaders also said that initially, they supported the Hindu Code Bill only for the sake of codification but that was a mistake. Sardar Bhopinder Singh Mann’s speech in parliament opposing inclusion of Sikh’s in the ambit of the proposed laws, which left other non-Hindu communities especially Muslims and Christians out, was also given prime coverage as well as the news of one Swami Satyananda “founder of All India Sanathana Dharma Acharana Sangham” commencing a fast unto death in Delhi. It seems that this portrays the picture of regional apprehensions on the matter. Despite arguing for simple marriage and divorce law, the newspaper derided the government for what it saw as its undemocratic attitude. In an editorial the next day (Sep. 21, 1951) it said,

Government’s obsession with Hindu Code Bill is not understandable. Dr. Ambedkar’s assertion that an enlightened minority will force a measure of social reform on the majority is undemocratic. Use of force is not a sign of enlightenment. Mr. Nehru is mistaken in considering the slogan of Hindu rashtra and adherence to Hindu shastra as same and reactionary. Those who want to follow their faith and consider marriage as an unbreakable sacrament should be allowed to do so. Sensible thing would be to make marriage simple and divorce provisions permissible. It is becoming more and more difficult to understand the government’s extra ordinary obsession with the Hindu Code Bill. The predominant weight of public opinion in the country is against the measure.⁷⁴

⁷³ The Hindu, Madras, Thursday, September 20, 1951

⁷⁴ The Hindu, Madras, Friday, September 21, 1951

The Hindi newspaper *Hindustan* praised the boldness of the government for going against the public opinion for the sake of an important reform prior to elections. It said,

Despite being aware that they have to face adverse impact of it in the elections, the government is trying to get some of the provisions passed. No sane person should oppose monogamy or divorce. Divorce does not imply that marital break off will become common, it only entails that a woman cannot be kept in an unpleasant relationship for ever.⁷⁵
(Translation is mine)

It's editorial also mentioned the meeting of a women's delegation with Nehru opposing the division in Hindu Code Bill. It also warned the government that if it will go for too much of compromise then it will lose the trust of women.

The editorial of the Urdu newspaper Al-Jamiat, published by Jamiat-ul-Ulema-i-Hind in its editorial said,

Bill is not against the interest of Hindu society. It is rather in its interest. Non-Islamic religions are today learning the virtues which Islam always had—divorce and the right of daughter in father's property. But having said this, we consider Hindu Code Bill as a legislation dealing with religious issues and *Ulemas* of Hindu religion should deal with it and not the government. On the question of monogamy, we would have no objections if the Hindu society decides on its own to follow it, but we think it is improper for a few Hindus sitting in Parliament to enforce it upon all Hindus.⁷⁶ (Translation is mine)

Al-Jamiat also quotes a woman member of Parliament, without naming to say that the condition of Hindu women was worse than those of Muslim and Christian women, which was necessitating the Bill. It also assured its readers that in Hindu code Bill, no such amendments would be made which will include Muslims in its purview.

During the debates, we find that it was only the women who were saying that the real emancipation of women would not take place unless they become economically dependent. On

⁷⁵ Hindustan, New Delhi, Sunday, September 16, 1951

⁷⁶ Al-Jamiat, Delhi, Saturday, September 22, 1951

the question of Uniform Civil Code, they are also unanimous about its need. Hansa Mehta had welcomed the move⁷⁷ to extend the Marriage Constraint Bill to other Community by dropping the term “Hindu” from it. So judged from that, it was regressive step on the part of government to avoid going for Uniform Civil Code, whatever may have been the compulsions. Renuka Ray wrote in 1948, “For a secular state such as India the best way of bringing about equality in law would be to have a national code of rational social laws. Perhaps time is not yet ripe for a national code in India.”⁷⁸

Conclusion: Throughout the debate on Hindu laws, we find that those who were opposed to the changes, tried to shift the discourse from that of gender justice and women’s rights and empowerment to that of the need for uniform or homogenizing laws for all the communities in the country. The forces of Hindu right reaction, which saw polygamy as a male privilege, have tried to appropriate the issue of Uniform Civil Code from the very beginning by attempting to shift the discourse as stated above. But when we see that even when Hindu Code Bill despite somewhat drawing from the Hindu scriptures, was not acceptable to them, then how can a Uniform Civil Code, which should be based on what Renuka Ray calls “rational social laws” would be acceptable to them?

⁷⁷ Hansa Mehta’s letter to the Secretatary of the Government of Bombay, Home Department on Child Marriage Restraint Act, Hansa Mehta Papers in NMML

⁷⁸ p. 26, Roshni, Journal of All India Women’s Conference, December 1948, Annual Number