
Critical analysis of Trajectories on Women's Property Rights in India: Vision of the Hindu Code Bill – A Glimpse

*J.Starli, ML.,
Research Scholar,
TNDALU ,Chennai*

Abstract

Women are the best creation of God. They played a vital role in the life of men as a mother, sister, daughter etc., without women life of men would not fulfilled. Eventhough women faced lot of problems in their natural as well as matrimonial family. By sacrificing all they reached their goal and occupied in a better position in their life. The right to property is especially sacrosanct since the state of financial deficit renders women's condition very much pathetic in a patriarchal society. In order to get a clear picture of women's property rights in a caste based patriarchal society like India, here, the Hindu Code Bill is taken into consideration as a major plot because the bill has a history of egalitarian dialogue and had been initiated as an effort to make an egalitarian structure, wherein women would be enjoying property rights as equal to men. This article deals with the trajectories of women's property rights in India after the introduction of the Hindu Code Bill. So, the focus area of the study is on women's rights in ancient Indian laws and their development in modern laws since the colonial period to the Hindu Code Bill.

Keywords: Coparcenary, graded inequality, *stridhana*, women's estate, succession, inheritance

Introduction

In the ancient period women are treated as equal to God and they were so respected in the society but now it has changed and they need to fight for the rights vested to them on their property. Women as a category is considered as subordinate to men throughout the ancient Hindu law statutes. Her own agency had been discarded and she had been made dependent upon and controlled by male (relatives and others as well) for her basic needs. In the process, in ancient law codes, such as Arthashastra, Manusmriti and other Dharmshastras, women were denied property rights.

The Hindu Code Bill, on the other hand, sought to put an end to gender discrimination and grant women right to property. This bill paved the way to remove the 'graded inequality' of caste society by offering the hypothesis that men and women both should be treated equally for a society to progress. Evidences show that the women who do not own any assets are subjected to threats of violence and other inequalities within the household.

The Constitution of India guarantees equality to all citizens irrespective of their sex, caste, religion, region, etc. Denial of the right to inherit ancestral property goes against women's rights as citizens, and against the principle of gender egalitarianism which has been conserved in the Constitution

wherein Ambedkar laid down the foundations of social justice. Without gender equality, the objective of social justice cannot be realized. From this egalitarian perspective, women's inheritance right is the subject of much scrutiny and investigation. To understand this, the dichotomy of tradition and modernity is interrogated.

Denial of Property Rights on the basis of Caste

Anthropological and sociological studies do reveal that gender inequality has been at the core of all the social, political and cultural identities¹. Religious texts provide the 'ideological' and 'moral' pedestal for the status and the roles of women in Indian society. Hinduism is the predominant structure and the caste system is the essence of Hinduism which, in turn, functions according to the doctrines of purity and pollution. Since women in a caste-based society are considered as the gateways of caste because of having reproductive powers, endogamy, that is, marriage within the caste circle only, had been imposed to keep caste purity intact. To implement it, women were kept under the control of men² in every sphere so that they could not take their decisions independently.

However, since caste norms are violable, some mechanisms, like excommunication, were introduced for maintaining the purity of caste Hindus. But such mechanisms, too, are discriminatory measures on patriarchal grounds, in which, if a woman marries a man of a lower varna than hers, she would be excommunicated from her paternal varna to a lower one and would also lose her earlier caste privileges. But if a man marries a woman of a lower varna than his own (however, not more than two degrees lower), he would not be excommunicated to a vile status, and would continue to enjoy his varna privileges³. In such an ambience, women's right on moveable or immovable property, viz., land⁴, had been denied because if, in such a caste-based patriarchal structure, women would have right to property or an absolute right of property, then that property may go to someone else⁵, after her marriage, as in a patriarchal structure, women are controlled by their husbands. Thus, the Indian society has gender inequality as its basic tenet.

Women in Ancient Hindu Codes

Hindu women's legal right to inherit property has been restricted from ancient times. In ancient law, women were granted some property known as Stridhan, but only for limited use for maintaining herself, her son and daughter-in-law and merely in the absence of her husband⁶. Kautilya stated in his Arthashastra that if a woman leads a pious life after her husband's death, she will get her endowment and jewellery, and also, if she has a second marriage arranged by her father-in-law, she will get whatever had been given by her father-in-law and husband. But if she marries any man

¹Kamei, S. (2011). Customary inheritance practices and women among the Kabui Naga of Manipur. *Indian Anthropologist*, 41(1), 55–69, p. 55

²Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, p. 10

³Rege, S. (2013). *Against the madness of Manu: B. R. Ambedkar's writings against the Brahmanical patriarchy*. New Delhi, India: Navayana Publishing Pvt. Ltd., (1915)., 2013, pp. 169 178

⁴which is the greater source of having an empowered and independent status

⁵even to a man of another caste, if she marries so

⁶Shamsastry, p. 219

other than that of her father-in-law's preference, she will have to give up everything she had been given by her father in-law and husband. In case of divorce, too, she will forfeit the right to use her in-laws' property⁷. So, in ancient times, a woman could only have maintenance rights with terms and conditions. In order to continue the use of that property for maintenance, she had to compromise her autonomy regarding marriage, divorce, etc., which is still prevalent. Women's exclusion from heirship is because of the patriarchal approach of the society. The latter considers that since men are the main bearers of a lineage, property should accrue to them only as women move into a different family (or lineage) after marriage.

So property was safeguarded by keeping it under male control. In the *Rise and Fall of Hindu Women*, Ambedkar argued that in the Brahmanical framework⁸, women were placed as equal to Shudras, both of whom were denied the basic human right of having property, self-respect and of acquiring knowledge and renunciation which is the 'lone way of salvation' in Hinduism. Buddha broke this Aryan rule and paved the way for women's free movement. But, over time, the triumph of Brahmanism over Buddhism degraded the Shudras and women, yet again, as it introduced the system of graded inequality⁹ of the caste system. Manu condensed a woman to a slave-like position regarding property by saying that 'a woman would not own any property and whatever she acquires herself belongs to him by whom she is controlled. After her husband's death she could take care of her husband's property but cannot have power over that property'¹⁰.

Hindu Code Bill: A Document of Rights

The ambience of women's rights started since the British period when the Hindu Women's Rights to Property Act, 1937 was enacted to grant Hindu widows, for the first time, the right to claim a share in their husband's property and to stipulate for partition of his undivided family estate¹¹. However, this was only a limited interest, as on their death, the property would be inherited by their husband's heirs¹². This legislation was followed by the British government's appointment of the B. N. Rau Committee, in 1941, for examining of the status of women's property rights in the subcontinent.

The Rau Committee sketched up two bills—the Hindu Marriage Bill and the Intestate Succession Bill. These were introduced in the Central Legislature in 1943, but they were eventually dropped because of opposition from the conservative elements. The effort was revived in 1944 in the form of

⁷Shamsastry, pp. 220–224

⁸Prevailed prior to Buddha's time and revived by Manu, after the Buddhist regime, and better known as Hinduism or Brahmanism.

⁹Dr. Babasaheb Ambedkar writings and speeches (Vol. 3, 14 [part 1 & 2]). New Delhi, India: Dr. Ambedkar Foundation, Ministry of Social Justice, Govt. of India., Vol. 3, p. 275

¹⁰Dr. Babasaheb Ambedkar writings and speeches (Vol. 3, 14 [part 1 & 2]). New Delhi, India: Dr. Ambedkar Foundation, Ministry of Social Justice, Govt. of India., Vol. 3, pp. 313–319

¹¹Banningan, J. A. (1952). The Hindu code bill. *Far Eastern Survey*, 21(17), 173–176, at p. 174

¹²Sinha, C. (2007). Images of motherhood: The Hindu code bill discourse. *Economic and Political Weekly*, 42(43), 49–57, 2007, p. 51

these bills being restructured into a draft code¹³, known as the Hindu Code Bill¹⁴. The Hindu Code Bill was introduced in the Parliament in 1946 but was notched upon and reintroduced, by Law Minister Ambedkar, in the Constituent Assembly on 11 April 1947¹⁵.

Ambedkar's concern for women's status had been reflected in the Hindu Code Bill. He explained that the 'bill was to codify and modify the Hindu law relating to seven different matters of rights to property of deceased Hindu who died intestate or without making a will and also deals with Maintenance, Marriage and Divorce, Minority and Guardianship, and Adoption'¹⁶. The bill was a departure from Hinduism and its degrading set of laws regarding women.

In Hinduism, there are two types of laws with regard to inheritance, marriage, adoption, etc. These are Mitakshara and Dayabhaga¹⁷. In Mitakshara law, the property of a man is not an individual property but belongs to coparceners or shared ownership of male lineage, such as father, son, grandson and great-grandson, by birth only. In the Dayabhaga set of law, the ownership of property has its individual character, that is to say, anyone who inherits property from their progenitors, has absolute right over that property. This latter strand of the laws was adopted in the Hindu Code Bill by Ambedkar who sought to make it as common law¹⁸, by modifying it according to the needs of modern times.

Since in the earlier law—Dayabhaga¹⁹, there was a discrimination among female heirs on the basis of their status of being married or not married and having children or not having children, this discrimination was proposed to be wiped out through this bill²⁰, wherein Ambedkar placed the widow, the 'daughter's share, as equal to the son, was prescribed in her father's as well as husband's property, and she was made an equal heir as the son, the widow, the widow of the predeceased son, the son of predeceased son of the predeceased son and the widow of a predeceased son of the predeceased son'²¹. More than that, Ambedkar brought an absolute equality between the son and the daughter by making a provision of the son's share in the mother's property as he held that the 'son also would get a share as equal to girl's share in mother's property, even in Stridhana too'²².

¹³Ray, R. (1952). The background of the Hindu code bill. *Pacific Affairs*, 25(3), 268–277, at pp. 273–274

¹⁴Som, R. (2008). Jawaharlal Nehru and the Hindu code : A victory of symbol over substance? In S. Sarkar, T. Sarkar (Eds.), *Women and social reform in modern India: A reader* (p. 477). Delhi, India: Indian University Press, 2008, p. 170

¹⁵Banningan, J. A. (1952). The Hindu code bill. *Far Eastern Survey*, 21(17), 173–176, at p. 174

¹⁶Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, p. 5

¹⁷Halder, D., & Jaishankar, K. (2008/2009). *Property rights of hindu women: A feminist review of succession laws of ancient, medieval, and modern India*, p. 675

¹⁸Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, p.6

¹⁹Merely in Dayabhaga law, the woman was prescribed some sort of property rights, while in Mitakshara law, she was ostracized absolutely.

²⁰Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, p. 06

²¹Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, p. 280

²²Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, p. 264

Thus, all the heirs had been placed on equal and balanced ground. Through the bill, women were proposed to be granted absolute rights regarding all property, and not merely in their Stridhana²³.

Unlike in Dayabhaga law, where women were entitled merely to the 'life estate' upon the property which they could enjoy only during their lifetime but could not sell, and which after their death would go to someone from their husband's family, Ambedkar altered this partial right into an absolute one²⁴. It was also propounded that whatever property is acquired by the woman after the enactment of the bill, it will be her exclusive property²⁵. Another arrangement regarding women's property was that, 'an adopted son would not dispossess a woman from the property she got from her deceased husband prior to the adoption of this son; in this way, the widow's position was sought to be strengthened'²⁶. Ambedkar also reckoned in the bill that the dowry which is given to a daughter by her parents at the time of her marriage in terms of Stridhana, and upon which she barely has any absolute right, must be treated as trust property by her in-laws²⁷.

Thus, Ambedkar reframed the bill with his passion for the values of liberty, equality, fraternity and dignity. The seamless entanglement of overture of women's absolute share in property, the purge of caste restrictions in matters of marriage and adoption, the elimination of polygamy and the support for monogamy would restore these values of an egalitarian society. As a consequence, this bill was for refurbishing the society on gender-neutral ideas. The bill was a kind of an equalizer and a route to make a society where man and woman both would be equal, where people of all castes and genders would be equal and where there would be a perfect kind of democracy with all being given equal status in society.

The bill could not get passed as a whole because of bitter opposition; however, it was passed later on in piecemeal manner. In May 1955, the Hindu Marriage Act was passed, followed by the Hindu Succession Act in May 1956, the Hindu Adoption and Maintenance Act in December 1956 and the Dowry Prohibition Act in July 1961. Through Section 14 of the Hindu Succession Act, 1956, a woman has been made an absolute owner through enlarging her limited estate, on whatever property she has, into an absolute one, and no woman can be denied property rights on the basis of any custom, usage or text. Furthermore, Section 8 of the said Act states that if a Hindu dies intestate, his property will devolve on his son, daughter, widow, mother, son or/and daughter of a predeceased son, son or/and daughter of a predeceased daughter, widow of a predeceased son, son or/and daughter of a predeceased son of a predeceased son and widow of a predeceased son of a predeceased son. Thus, female heirs were granted property rights on the estate of the deceased male Hindu.

²³Stridhana is something that a woman can claim as her own property within her marital household. It may include her jewellery, gifts presented to her and the dowry given by her family. Generally, gifts given by the bride's family are considered as Stridhana.

²⁴Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, pp. 7–8

²⁵Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, p. 150

²⁶Sinha, 2007, p. 52

²⁷Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India, p. 8

This Section applies to self-acquired property or the separate property of a male Hindu. While coparcenary property, that is, joint family property under Section 6 of the Act would devolve by survivorship on the surviving members of the coparcenary, that is, male lineage, if the deceased had left a surviving female relative such as a daughter, widow, mother, daughter of a predeceased son, widow of a predeceased son, daughter of a predeceased son of a predeceased son or widow of a predeceased son of a predeceased son, the coparcenary property will devolve by testamentary succession.

Despite such egalitarian provisions, some inequalities remained in that according to Section 23 of the Act of 1956, if an intestate Hindu has died surviving both male and female heirs and his or her property includes a dwelling house, wholly occupied by members of his or her family, the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective share therein; the female heir shall be entitled to a right of residence merely therein, and that too, only if such a female heir is a daughter and is either unmarried or has been deserted by, or has separated from, her husband or is a widow.

A married daughter who has left her husband of her own accord and is not deserted by her husband has no right to reside in the dwelling house. Under Section 15 of the Hindu Succession Act (1956), the daughter-in-law inherits only when she is a widow. The restriction on the partition is imposed only on the female heirs. Thus, it can be seen that the Hindu Succession Act (1956) excludes married daughters from the right of residence in the dwelling house as well as a share of the partitioned property²⁸. Post 1956, five states in India, namely Kerala (1975), Andhra Pradesh (1986), Tamil Nadu (1989), Maharashtra (1994) and Karnataka (1994) took cognizance of the fact that women need to be treated equally both in the economic and social spheres. Out of these five southern states, four states, excluding Kerala, took initiative and made state amendments stating that the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son²⁹.

Some exclusionary provisions of the Hindu Succession Act, 1956, as mentioned above, were wiped out through the Hindu Succession (Amendment) Act, 2005, in which daughters have been included in the coparcenary list, which means, if a Hindu dies, his/her interest in the property of a joint Hindu family will devolve by testamentary or intestate succession, as the case may be. If there is partition of such property, it will be shared among all the children. The share of the daughter and the son will be the same; the share of a predeceased son or a predeceased daughter, as they would have received had they been alive at the time of the partition, shall be allotted to the surviving child of such a predeceased son or predeceased daughter; the share of the predeceased child of a predeceased son or a predeceased daughter, as such a child would have received had he or she been

²⁸Halder, D., & Jaishankar, K. (2008/2009). Property rights of hindu women: A feminist review of succession laws of ancient, medieval, and modern India, p. 678

²⁹Chaudhury, M. (2004). *Feminism in India*. New Delhi, India: Kali for Women and Women Unlimited.

alive at the time of the partition, shall be allotted to the child of such a predeceased child of the predeceased son or a predeceased daughter³⁰.

After this amendment Act, the daughter gets a birth right in the ancestral property owned by the coparcenary. Sharmila Rege in *Against the Madness of Manu: B. R. Ambedkar's Writings on Brahmanical Patriarchy* argued in favour of the Hindu Code Bill by saying that through this bill, Ambedkar recognized women as individuals and politically equal citizens at par with men. Rege noted that this bill was aimed at curbing practices such as compulsory endogamy, absence of women's absolute right to property, indissolubility of marriage for women, etc., which reproduce Brahmanical patriarchy. She observed that Ambedkar reframed the bill with his passion for the liberal values of liberty, equality, fraternity and dignity.

An Overview of the Hindu Code Bill Provisos

Women's absolute share in property, the purge of caste restrictions in matters of marriage and adoption, the elimination of polygamy and overture of monogamy would restore the values of a social democracy. As such, this bill was proposed for refurbishing the society on gender-neutral ideas, and Ambedkar, himself, referred to it for the 'structural repair of the society'³¹ and for the removal of the superiority- and inferiority-based relations. The Hindu Code Bill challenged the base structure of patriarchy and awarded women equal position vis-a-vis men. Hence, the bill was against the structure of domination and suppression of women and, as such, challenged the very philosophy of Hinduism. Through the Hindu Code Bill, Ambedkar sought to destroy the anti women codes of the Manusmriti and of Hinduism.

The proponents of Brahmanical patriarchy vehemently opposed the Hindu Code Bill. As Ambedkar did not want to make any compromises on the women's issues, he had to resign from the post of the first law minister of independent India. His resignation was a protest against the suspension of the proposed egalitarian restructuring of society. This Act is a landmark in the history of movement for women's rights in India³². Bina Agarwal³³ in "Bargaining" and *Legal Change: Toward Gender Equality in India's Inheritance Laws* gives a synoptic framework of legal change and of the move towards equality. She argued that the Hindu Succession Act, 1956 sought for transforming the major inheritance systems that turned Hindus from a situation of gross inequality to substantial equality. Prior to the said Act, Hindu women could merely inherit their father's/husband's property after four generations of agnatic males, and even then, only as a life estate. The Hindu Succession Act, 1956 (which resulted into the Hindu Succession (Amendment) Act, 2005) provided women inheritance rights equal to brother's/son's in most property.

³⁰Derrett, J., & Duncan, M. (1959). *The Hindu succession act, 1956: An experiment in social legislation*.

³¹Derrett, J., & Duncan, M. (1959). *The Hindu succession act, 1956: An experiment in social legislation*, p. 752

³²Rege, S. (2013). *Against the madness of Manu: B. R. Ambedkar's writings against the Brahmanical patriarchy*. New Delhi, India: Navayana Publishing Pvt. Ltd., (1915), 2013, p. 201

³³Agarwal, B. (1994). *A field of one's own: Gender and land rights in South Asia*. Cambridge, UK: Cambridge University Press.

Bina Agarwal argued that this Act strengthened women's bargaining power against the state and the community. Hereto, Daniel Rosenblum in his essay 'Unintended Consequences of Women's Inheritance Rights on Female Mortality in India' talks of the negative impacts of women's legal right to inherit ancestral property. As a measure to improve women's land rights, in 2005, India amended the Hindu Succession Act, 1956 and made women legal heirs to their parents' ancestral agricultural land. If daughters are denied an equal share of their parents' ancestral land by their family, they can go to court to claim this share. Thus, now, it is not that parents have the legal option to leave a share of their land to their daughters but that they are legally required to do so.

There are some scholars who are, however, not convinced with the provisions of the bill and insist on saying that there is nothing new in it. As Rina Verma Williams in 'The More Things Change: Debating Gender and Religion in India's Hindu Laws, 1920–2006' argues, the Hindu Code Bill debate was fundamentally a religious and gendered one. She suggests that just as the British rulers took charge of women's upliftment as their civilizing mission by arguing that Indians were unfit to govern themselves since the women had a very bad status³⁴, the postcolonial Indian state, too, tried improving women's status for the same purpose.

However, one difference is that the postcolonial legislation, that is, the Hindu Code Bill was to codify and modify the Hindu personal laws which constitute a two-way process. First, codification shall be done without altering the substantive content of the laws, while modification will be made to make this substantive content a modernized and rationalized one or, better, one can say, more gender-just. Furthermore, she speaks of debates around the Hindu Succession (Amendment) Act, 2005 which granted women greater rights. Women's property rights were advocated as the matter was of financial security, equity and dignity of membership in the family. On the other hand, Madhu Kishwar, too, in her essay 'Codified Hindu Law: Myth and Reality' argued that there was nothing new in the Hindu Code Bill.

The provisions made under the said bill were already existing somewhere in India as accepted law. However, she spoke of the Hindu Succession Act, 1956 as the key part of the code, as no other rights could be effectively claimed by women unless they had economic rights. She argued that the said Act misled the codification of law for Hindus without giving them any option. The Act gave Hindus the false notion that Hindu women now have equal legal rights, which was far from being the case; furthermore, it created the myth that reformed Hindu law is 'secular', while Muslim personal law is 'religious', which can be secularized only through the Hinduization of it.

Conclusion

Traditionally, women's desire for property rights was assuaged by giving something as gift only, instead of right. Gifts, in the name of dowry, are given as per the wishes of her natal family, for the sake of their name and fame in society, but not as a right of that woman. It is observed that the Hindu Code Bill has influenced the women's movement a great deal and has paved the way for

³⁴However, they claimed non-interference simultaneously since they did not have codified personal laws.

women to demand their property rights by making them conscious about it. Despite all this, however, many women cannot or are not able to access property due to legal illiteracy and the societal patriarchal mindset. This problem can be countered through the sensitization of people towards accepting and recognizing women as equal members of society at par with men. Hence, Government should take effective steps to protect the livelihood of woman.