

Rhetoric, Reason and Representation: Four Narratives in the Hindu Code Bill Discourse

by

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Introduction

Historical research, particularly in the socio-legal history in general and process of law formation in particular, has predominantly been based on interpretation of narratives rather than factual evidence. The predominance of narratives in legal history has been accepted in the critical discourse analysis of recent times (Conley and O’Brarr, 1998, Harris, 2001, Fludernic, 2014; Brooks, 1996; and Moran, 2012). As a matter of fact, the Critical Discourse analysis approach (hereafter “CDA”) has attempted to demonstrate that law in its formative phase is deeply embedded culturally - where ideology is transmitted in the legal process through a wide diversity of narratives. Law thus evolves not outside the social sphere, but within the society. Importantly, CDA has offered the critical link of society and the official sphere - the transmission mechanism working essentially through a complex web of narratives, power and social representation.

In documenting legal history, therefore, the craft of legal historians lies in comprehending the social structure and the ability to interpret narratives that emerge in the process of legal change in the public and political sphere. Depending on the structure in society, historians encounter multiplicity of narratives and the challenge to the historian lies in the assimilation of competing narratives in their specific spatial and temporal contexts. It has also been termed as “multiperspectivity” in historical analysis (Beer,1997). Narratives in this context is broadly taken as the content of the discourse whereas rhetorical devices are seen as forms through which they are expressed (Brooks,2005). Thus, where the challenge to gender injustices for instance will be embedded in the narrative (including argumentation), the choice of expression,i.e., the modes can vary from speech, drama , written submissions, music and so on- such modes of communication will be part of the rhetoric, i.e., ways of transmission of the message. Such narratives are transmitted to the political decision making process through a wide range of discourses carried out rationally where reason is "that ensemble of practices that contributes to the opening and preserving of openness" in human affairs, and a focus on reason's possibilities for social change (Kompridis, 2006).

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The present study focusses on the multiplicity of narratives in a critical phase of Indian legal reform, the reform of family laws in the 1940s and 1950s, known as the Hindu Code Bill controversy. As a matter of fact, the decade of 1940s presents a variety of complexities to a historian as it was an unusually vibrant phase in Indian economic, political, social and cultural history, as India emerged out of its colonial status and embarked on the path of transforming itself as a modern nation. The cultural setting also experienced the need for alignment to the aspirations of an emerging nation. The protracted debate over the Hindu Code Bill with widespread participation across all regions and segments of the Indian society between 1941 and 1956, i.e. the Hindu Code Bill debate, was of momentous importance to the entire project of carving a new, secular India. The Hindu Code Bill debate climaxed in the family law reforms of the mid 1950s and influenced, to a great extent, the distribution of rights and allocation of resources within the Indian family, and enabled Indian society to align with its development model of planned economic progress and modernisation. In the process, it endeavoured to give significantly greater rights to Indian women. At the same time, it was a celebration of notions of freedom and individualism over the structured sense of destiny propagated for many centuries in the name of religion. By seeking to weed out practices that were obsolete in the contemporary social milieu and by trying to frame a uniform set of rules that could govern all Hindus through the length and breadth of India, the Hindu Code Bill came to be regarded as a revolutionary legislative initiative for the Hindu community in India and without doubt the single most important legal initiative in Indian history.

Quite expectedly, the diversity of interests in society gave rise to a multiplicity of narratives within the Hindu Code Bill discourse in the public, political and legislative spheres. It also reflected the power structure in society and its translation into political representation. Therefore, a true assessment of the Hindu Code Bill discourse lies in the assimilation of such multiplicity of narratives and in understanding the transient and long run outcomes of the communicative processes surrounding the legal initiative.

The present paper is divided into three sections. After presenting a brief background of the reforms in Hindu laws till the Hindu Code Bill controversy and the family law reforms of the 1950s in Section 1, the paper discusses four prominent narratives in the Hindu Code Bill discourse in section 2, where, using critical discourse analysis as a theoretical tool, the paper tries to present the linkages between social ideology behind narratives and the process of law formation. In doing so, the paper analyses the interrelation between the rhetoric presented, the variety of reasoning approaches adopted and the representation of such society in the political sphere, the site of legal enactment. In the concluding section, the paper attempts to present an assessment of the relationship between rhetoric, reason and reality by looking at the history of the Hindu Code Bill discourse and suggests that the historian's craft in legal history lies in assimilation of multiple narratives and in interpreting its relation with the representation and manifestation of power within the legislative decision making process.

Section 1

Rocky Road to Hindu Family Law reforms

The Hindu scriptural law traces its origin to divine revelations. Adapted with variations, plurality of personal law and its local application by village and caste councils as per the ruling local customs has been an essential characteristic of Indian communities. Influenced by the Shastras and ancient commentaries, Hindu personal laws became flexible adaptations of *Smritis* and *Dharmashastras* that varied significantly over time and across regions.

Although there was no uniformity in the personal law for Hindus in India as it varied from community to community, the British colonial rulers, presuming that the personal laws in India must have drawn legitimacy from some fundamental religious source, attempted to codify personal law in modern India around the late eighteenth century, in respect of the provinces of Bengal, Bihar and Orissa. With the emergence of the new law codes framed under British patronage, two things became clear. First, in many cases the local law turned out to be more flexible (and applicable) than the rigid Hindu codes prepared by under British supervision. Although the British rule in India was based on the premise of non interference in personal laws of religious communities, in some cases, British rationality came into conflict with a number of aspects of Hindu law which they considered derogatory to women and therefore difficult to apply in legal decisions. In the nineteenth century, under pressure from their own conscience and the pressures of social reformers, the British started reforming certain Hindu laws such as the practice of widow burning (Sati) and the prohibition of widow remarriage. The onset of the twentieth century saw further intensification of pressures for improving the legal status of women. In 1929, the Child Marriage Restraint Act came into force.

During this early twentieth century, efforts at putting together fragments of Hindu personal laws into a single code commenced, which came to be referred to as the process of enactment of a Hindu Code of law. The initial efforts of enacting a Hindu Code comprehensively covering all aspects of Hindu customary practices can be traced back to the Indian Legislative Council in the 1920s immediately after the Montague-Chelmsford reforms of 1918 and the Government of India Act of 1919 designed to introduce a more democratic style of functioning where the Indians were given an opportunity to self govern within the bicameral system of governance.

The first round of debate over the Hindu Code was initiated by the Indian lawyers within the Legislature in 1921 and was spearheaded by Mahamahopadhyaya Ganganath Jha, a member of the Viceroy's Legislative Council. With the Congress Party members staying away from the Legislature during the civil disobedience movement and the women's movement in India in its infancy, the debate came to be termed as the "lawyer's debate" with very little political or public participation. The debate failed to make much headway as it was considered too difficult to handle¹.

In the 1930s however, women's movement in India started to make its presence felt as Hindu women's right to property became the subject of intense dialogue in legal circles. Women's organisations campaigned for a comprehensive Code of Hindu laws rather than the piecemeal legislation done since the early 1930s. In 1934, the All

India Women's Conference passed a resolution demanding that a commission be appointed to enquire into the entire question of eliminating the legal disabilities of womenⁱⁱ. In 1937, the Hindu Women's Rights to Property Act was passed, giving the Hindu widow, who had previously been excluded from inheritance, a right to succession and same rights of her deceased husband in the Hindu undivided joint families. In January 1941, the Government appointed a Committee to revisit the Hindu Women's Right to Property Act, 1937 and to suggest amendments and clarify rights of the widow; and remove any injustice that may have been by the Act to the daughtersⁱⁱⁱ.

The Hindu Law Committee, also known as the Rau Committee, was headed by B.N.Rau, a judge of Calcutta High Court. Other three members were Dwaraka Nath Mitter, ex-Judge of Calcutta High Court, R. Gharpure, Principal, Law College, Poona and Rajratna Vasudev Vinayak Joshi, a lawyer of Baroda^{iv}. The Committee was constituted in January, 1941 and submitted its report on June 19, 1941. Among various intricate legal recommendations in the Report included a suggestion to enact a complete Code of Hindu law given that a number of legal hurdles are created in available "piecemeal" legislations. The Report contemplated the preparation of the Hindu Code in stages, beginning, "with the law of succession, to be followed by the law of marriage and in due course by other topics of the Hindu law"^v. The Committee of 1941 stated that the Code should arise out of agreed public opinion.

The preliminary draft of the Hindu Code Bill was debated in the Legislature in March 1943 and March - April, 1944. Subsequently, the Hindu Law Committee was revived on January 20, 1944, for the sole purpose of formulating a Code of Hindu law under the chairmanship of Sir B.N. Rau, with Shri Dwaraka Nath Mitter, J.R. Gharpure and T.R.Venkatarama Sastry an advocate of Madras High Court^{vi} as members. The Committee's objective was to prepare a progressive Code of Hindu personal law while working towards a social consensus through interactions with opinion leaders, lawyers and organised popular voices. With this objective in mind, the Committee toured a number of cities throughout India, including Bombay, Poona, Delhi, Allahabad, Patna, Calcutta, Madras, Nagpur and Lahore during 1945^{vii}. The Code was translated into several Indian languages and distributed across the country. It was published in Gujarati, Marathi, Hindi, Bengali, Tamil, Telegu, Malayalam, Kannada, Urdu, Gurmukhi, Sindhi and Oriya. In all, the Rau Committee examined one hundred and twenty one individual witnesses and one hundred and two associations, which were represented by two hundred and fifty seven persons^{viii}. This apart, they received numerous representations from individuals and social organisations in favour as well as against the Bill.

The experience of the Rau Committee during their tour was recorded in their Report, "There were flag demonstrations at Allahabad, Calcutta, Nagpur, Amritsar and Lahore, on our arrival in cities or when we passed through them; but the demonstrators told us that they were inspired by no personal hostility towards us, and merely wished to impress us with the strengths of the feelings entertained by the orthodox opinion on certain provisions of the draft Code. On the other hand, there were white flag demonstrations at Amritsar and Lahore at which the supporters of the Code were present in large numbers..."^{ix}.

On return from the tour, when the Committee sat down to compile the Report, serious differences of opinion emerged among members. Dwarkanath Mitter felt that as public opinion was decisively against the Hindu Code, and therefore the time is not ripe to introduce the Code. Other members of the Committee were generally of the opinion that the Code should be introduced, as the progressive element of the Code is in alignment to India's developmental aspirations. Finally, the Hindu Code Bill was introduced to the Constituent Assembly on April 9, 1948 and was debated extensively during 1948-1951.

The Hindu Code Bill aroused widespread antagonism from orthodox segments of the Constituent assembly legislature and women legislators. The intensity of the challenge thrown towards the Hindu Code Bill and the cry of 'religion in danger' were echoed both within and outside the House. As the discussion on the clauses could not be completed due to lack of time and the session ended, the Bill lapsed. The Bill remained in hibernation for three years. With the beginning of the Nehruvian era in Indian politics in the early 1950s, it became easier to push forth the liberal agenda of the Congress Party. Nehru's political strength and his ability to implement his vision increased manifold when in 1952, the Congress party swept the polls, winning by a vast majority. Immediately afterwards, the Hindu Code Bill was brought out of the shelve debated during 1953-56, and enacted as four separate acts Hindu Marriage Act of 1955, Hindu Succession Act of 1956, Hindu Minority and Guardianship Act of 1956 and the Hindu Adoptions and Maintenance act of 1956. These apart, one part of Hindu Marriage Act relating to civil marriage was carved out and enacted as the Special Marriage Act of 1954. Together, these acts bestowed several legal rights to women and created the base for women's empowerment in India.

The Four Pillars of Hindu family law was considered a partial victory for women's rights. The Hindu Marriage Act removed the necessity that marriage had to be performed within the same caste. It also introduced monogamy as a rule and created provisions for the dissolution of marriage, all progressive elements within the Hindu Law. Moreover, the Hindu Succession Act, 1956 conferred upon all female heirs absolute ownership of property and not a limited interest on the property (enjoying the property without ownership during lifetime). The Hindu Adoption and Maintenance Act, 1956 a woman was eligible to claim one-third of the joint income of her husband and herself in case of divorce. Moreover, the Hindu Minority and Guardianship Act, while preserving rights of the father to be the natural guardian of a child, gave mother guardianship rights if the father neglected the child. The mother was also granted the right to be the lawful guardian of illegitimate children. Thus, despite limitations, the Acts together brought several progressive legal provisions that were progressive from the viewpoint of Indian family in general and gender rights in particular.

To Jawaharlal Nehru, the first Prime Minister of India, the passage of the legislations regarding Hindu social reform had great symbolic significance. In his letter to the Ministers, Nehru wrote,

“they are not in any way revolutionary in the changes they bring about and yet there is something revolutionary about them. They have opened the barrier of ages and cleared the way somewhat for our womenfolk to progress”^x.

J.D. M Derrett , a noted expert on Hindu law and its codification, observed that the Code deliberately leaves room for customs to prevail, while creating inroads into the administration of Hindu law. Derrett observed,

“The result is bound to be the elimination gradually of that esoteric and complicated technique of administering Hindu law which is hardly adequately describable in terms of anything other than mystery. Hindu law will come down out of the clouds and will take on the guise of a statutory law similar to the law of Contract or Evidence. This cannot but be beneficial in the long run.”^{xi}

Section 2

Four Narratives in the Hindu Code Bill Discourse

Four prominent narratives can be identified while reviewing the Hindu Code Bill discourse of the 1940s and 1950s. The first may be termed as the orthodox or religious narrative, as it derived its legitimacy from the ancient religious scriptures of Hindu society. This narrative came from religious organisations, spiritual leaders or right wing political parties. The second one was the liberal narrative that was premised on the notion that emerging Indian nation needed modern, forward looking legislation. This narrative got the backing of the liberal elite and the main political party, the Congress. Progressive legislation, based on the notion of gender equality, was the central focus of the third strand of legal narrative. The Gender narrative was propagated by the pan-Indian, regional and local women’s associations as well as leading ladies of Indian political set up. The fourth narrative, which may be called the minority narrative, was entirely constructed by a leading socio-political figure, Dr. B.R. Ambedkar. Similar to the gender narrative, the minority narrative highlighted discriminations in Hindu society and underscored the need to address the caste inequalities in Hindu customary practices. The gender narrative was embedded in the minority narrative due to the “double status disadvantage” of lower caste women. It may be noted that the orthodox narrative was in an antagonistic ideological position as compared to the other three narratives, as the other narratives were essentially progressive in nature and wanted to put Indian society on the path of modernization. The rhetorical content , i.e., the way the narratives were expressed, or the forms of expression, varied among the four legal narratives

The Religious Narrative

Over centuries, religion provided the basis for morality in Hindu society and played an instrumental role in assigning the role for women within the family. Among the Hindus, in the pre-colonial era, religion and law were linked through diverse local customs administered by caste councils or village *panchayats*^{xiii}. Religious sources

that were cited for social administration included *Shruti* (the divine revelations or utterances, primarily in Vedas), *Smriti* (the memorized word—the *Dharmasutras* and the *Dharmashastras*) and *Sadachar* (good custom). These were not written texts and the knowledge was passed on by an oral tradition from generation to generation, leaving the scope of texts being re-interpreted in contemporary contexts. These were not written texts and the knowledge was passed on by an oral tradition from generation to generation, leaving the scope of texts being interpreted differently across time and space.

In the Hindu Code Bill discourse, the religious narrative emerged both in the public and political spheres. Lawyer's Associations constituted a vocal segment of the educated Indian community reflected the religious rhetoric. An instance of such religious rhetoric can be found in the statement issued by the Ahmedabad Law Association in their representation to the Rau committee in 1945:

“ the Hindu law is based not on mere proprietary claims or mere social fabric of the family property as under English law or any other personal law but is primarily grounded on the sacred principles of religion which have from time immemorial been the basis of conduct of a Hindu born as such. The statutory enactment which revolutionizes these principles is fundamentally contravening the solemn promises of Her Majesty Queen Victoria's proclamation that in matters of religion and personal law her subject in India shall have the fullest liberty”^{xiii}

The rhetoric of the Sitapur Bar Association also reflected the dominance of religion in Hindu way of life:

“ Unfortunately, the proposed Bill contains many features which not only cut at the fundamental principles on which the Hindu law is based but comes into direct conflict with the sentiments and interests of the society. ...We are of the opinion that the Bill should be withdrawn by the Government failing which it will be the duty of the opposition to have the Bill thrown out”^{xiv}.

The religious narrative was also embedded in the comments of religious leaders, who commanded huge respect in society. For instance, on behalf of His Holiness Sri Jagat Guru Sri Shankaracharya Swamigai of Kanchi, the temple authority in a statement observed “ In the course of incessant travel from village to village both in North India and in South India for the last 30 years, His Holiness has been in touch with the feelings and ideas of the hindu public, high and low, and His Holiness is convinced that the Hindu general public neither demand nor approve of any changes that deviate from the existing Hindu law”^{xv}

In a similar vein, Mahamahopadhyaya Pandit Vasudeva Shastri, main disciple of His Holiness Srimat Jagatguru Madhavacharya, Uttaradhi Math, Sholapur wrote on behalf of His Holiness:

“ As the head of the religious seat of the Hindus, I hereby let you know that the draft Bill of the Hindu Code as framed and published by the Rau Committee is contrary to the tenets of the Hindu religion, and that it is likely to disturb the social order of the

Hindus and would prove impracticable. The Dharmapeetha is against it. I make an earnest suggestion that the Bill should not be passed into law”.^{xvi}

Moreover, narratives of several Religious organizations throughout the country represented to the Rau Committee their objection to the Hindu Code. The Bharat Dharma Mahamandal of Benaras protested against the Code in the strongest words:

“ These measures of anti-Hindu religion are unwise, unstatesmanlike and unjust and cut into the very root of the sacred religion of the varnashrami sanatani Hindus who are by their inborn nature loyal to the crown”^{xvii}

The religion in danger rhetoric was further strengthened by the popular Sanatan Dharma Sabha, “ the provisions of the proposed Hindu Code are contrary to the principles of Dharma Shastra and ...will cause discord and mutual dissensions in families leading to dangerous consequences.”^{xviii}

The All India Hindu Mahasabha, Madras put forth the argument that the enactment of the Hindu Code tantamounted to a “suicidal folly” and the entire Hindu race faces the threat of extinction from the Code:

“ With muslims multiplying through polygamy and through conversions of polygamous Hindus, the population of India will be predominantly Muslim in a couple of generations and the new Hindu code based on monogamy may get the credit of having converted the whole of India into a vast Pakistan where the surviving Hindus will be treated as strangers in their own fatherland. Suicidal folly cannot go on further.”^{xix}

This rhetoric in the public sphere also found resonance when the Bill was debated by the Indian legislature. Babu Ramnarain Singh, legislator from Bihar stated, “It appears that there is a measure called the Hindu Code Bill and a discussion is going on in this House but in fact a conspiracy is being hatched to disrupt the Hindu society. I feel that it is something like a preparation to invade the Hindu society.”^{xxx}

Concepts like divorce, alien to Hindu religion was strongly contested in the Parliament. One parliamentarian noted : “Hindu marriage as ought to be known to every one who professes himself to be a Hindu, who honestly takes pride in calling himself a Hindu, as I myself do, is a sacrament and not a civil contract and as such it will not be difficult for him to admit that divorce is absolutely foreign to its concept. Union by marriage, according to the Hindu Shastras is sacred and absolutely indissoluble” (Laxmi Kanta Moitra’s intervention).

The Congress party was divided too. One of the leading figures of the Congress Party , Rajendra Prasad, went on to a lengthy exchange of letters with Nehru urging him to drop the code. Prasad’s narrative was essentially religious and focussed on hurt Hindu sentiments , expressing “ “We have to weigh how it will be received by the vast bulk of Hindu public against what foreigners outside India and those who call themselves 'progressive' would say. My feeling is strong on the point that we shall be riding roughshod on the cherished sentiments of the vast bulk of our people and that without having any warrant or sanction from them simply because we consider certain things to be right.”

After the resounding victory of congress in the elections of 1952 and the rise to prominence of Nehru in the Congress, the opposition to the Bill in the legislative sphere fell mainly the Hindu Mahasabha, the Bharatiya Jan Sangh and the Ram Rajya Parishad. In the parliament, the Hindu Mahashabha leaders, led by N.C.Chatterjee opposed the Code during 1952-1956, where similar rhetorical devices such as “defamation of Hindu religion”, “ religion in danger”, “ unfair and unwarranted imposition from above on Hindu Community” , “ conspiracy against religion” were raised. An example of such rhetoric can be found in the 1951 Bharatiya Jan Sangh election manifesto was unambiguous on the Hindu Code Bill. It stated:

“The party holds that social reform should not come as imposition from above. It should work from within the society. Any far-reaching changes as envisaged in the Hindu Code Bill, therefore, should not be made unless there is a strong popular demand for them and a clear verdict is obtained from the electorate”

The Liberal Narrative

In India, the liberal perspective was provided by the political leadership of the day under Mahatma Gandhi, Jawaharlal Nehru and B.R. Ambedkar.

Gandhi realized that despite the high place accorded to women in the Hindu scriptures, the reality of Indian society in the nineteenth and twentieth centuries was quite different. Hindu women were treated as adjuncts to the males in Indian society, primarily performing roles of mothers and wives within the family.^{xxi} Gandhi was instrumental in bringing Indian women out of their protected environment to join the Indian National Movement, thereby revolutionising the Indian social scene.

Social legislation for the institution of women's rights had the support of Gandhi, even though he thought it to be a rather minor step towards the emancipation of women. He wrote,

“I am uncompromising in the matter of women’s rights. They [women] can no longer be treated as dolls or slaves without the social body remaining in a condition of social paralysis...That is why I take every occasion to protest in no uncertain terms that so long as women in India remain ever so little suppressed or do not have the same rights [as men] India will not make real progress”^{xxii}.

Gandhi did admit its necessity, but it was to him only one of the issues facing Indian women. He termed legal reform as a “mere palliative”. His conceptualisation of the emancipation of Indian women was intricately linked to the growth of the nationalist movement. In fact, there is no doubt that Gandhi's call to women to join the national movement had a dramatic impact. The physical presence of women in the non-cooperation movement added a new dimension to the freedom struggle^{xxiii}. At the same time, it has also been pointed out that Gandhi thought of women's participation in the freedom movement in a limited sense, trying to hold women's discontent within

the nationalist cause. Geraldine Forbes has termed this as “the politics of respectability”^{xxiv}.

Jawaharlal Nehru, on the other hand, was the prime force behind the Hindu Code Bill as he expected it to promote integrated development of Indian society. To begin with, Nehru was confident that the Hindu Code Bill could be pushed through in the Parliament. This is evident in his assertion in the Parliament on December 19, 1949:

“I do not wish the House to think in the slightest degree that we consider that this Hindu Code Bill is not of importance, because we do attach the greatest importance to it, as I said, not because any particular clause or anything, but because If society has to advance, there must be this integrated advance in all fronts”.

Nehru spoke in support of the Bill in Parliament that “It should be clearly understood that this is one important measure to which the Government attaches importance and on which it will stand or fall”.

The liberal narrative was supported outside the parliament by the liberal minded segment within the growing educated class as well as a large number of social reform organisations spread regionally across the country. One example of liberal social organization was the Dharma Nirnaya Mandal was formed in 1936 by a segment of the liberal minded social reformers of Maharashtra.

The Dharma Nirnaya Mandal's observation at the grassroots level in this respect is noteworthy,

”as none of the present political parties as such is keen about the successful passage of the Bill; we were not able to secure cooperation from any party. No doubt, in places like Pandharpur, Sholapur, Dhulia and Akola, local Congressmen did organise our programme but that was in their personal capacity”^{xxv}.

The importance of discourse as a mode of transmission of the power structures of society can be discerned from the observation of the Dharma Nirnaya Mandal that,

“It is also necessary to counteract the propaganda carried on by the anti-Hindu Code Conference against the Bill, by convening Conferences at important places like Delhi, Indore, Nagpur, Madras etc. of all persons who have expressed themselves in favour of the Bill”^{xxvi}.

Thus, while garnering support for the Hindu Code Bill at the grassroots level, the Mandal observed the organised campaign of the opponents of the Bill as opposed to the rather lukewarm efforts by mainstream parties such as the Congress.

A significant segment of educated enlightened elite came in support of the Hindu Code. While it is not possible to cover the entire breadth of support that came from secular intelligentsia, it was finding resonance in English and vernacular press.

The Times of India dated January 31, 1945 pointed out :

“The experience of pouring new wine into old bottles has not been altogether happy and serious legal difficulties have been encountered, apart from the consternation caused in orthodox circles. In this state of things, a general revision and if possible, codification of Hindu law as a whole seems desirable. With so vast and complex a system of law, the task is bound to be formidable and controversial, and cannot be undertaken offhand without elaborate investigation and the most careful preparation of the ground. The law, at any rate, urgently needs simplification and uniformity in its application as far as practicable putting aside questions of social reform by legislative changes which are calculated to create trouble” .

The editorial reflected support of Indian intelligentsia towards the necessity for enacting a code of family laws. It also brought forth the apprehensions of a secular intelligentsia in bringing about legislative changes in the presence of a strong, patriarchal orthodoxy. The editorial admitted the consternation caused in orthodox circles and tried to justify the need for modification of the legal system by reasons apart from the questions relating to women.

The Gender Narrative

The growth of the women's movement contributed significantly towards rising social awareness on gender issues. With the emergence of regional and all India women's associations, their voices and ideological perspective came to represent the gender narrative. Since much of women's empowerment initiatives were based on persuading the state to introduce enabling legal legislation, the gender narrative gained quick prominence in the law formation discourse.

The Women's movement gained prominence with the emergence of Women's Indian Association, founded in May 1917, was the first organization of pan-Indian character; its branches were first opened in Srinagar, Madras, Calicut, Tanjore, Bezwada and Bombay. The association, under the leadership of M. E. Cousins conducted the women's suffrage movement and succeeded in its mission^{xxvii}. Women's Council of India was founded in 1920 at Bombay and it was open to all women engaged or interested in women's work. The All India Women's Conference was also founded in Bombay in 1926, and become the all-India organization of Indian women to fight for their rights and work for their general welfare and promotion of education. In broad terms, the gender narrative saw the Hindu Code Bill as a tool for women's upliftment. Through its press statements, meeting resolutions and various reports, the Women's organisations wholeheartedly supported the Code and its provisions- the introduction of monogamy and the provision of divorce.

The women's associations of Bengal observed in their sitting with the Hindu Law Committee on February 28, 1945:“ We are very much in favour of the proposed Code. The opposition comes from a select portion of the aristocracy who have organized themselves for the purpose. These aristocratic ladies have done little social work among women. They rendered little help to the people in their recent troubles. They have little knowledge of of the masses.”^{xxviii}

As a matter of fact, it was the organised women who made their presence felt through the communicative processes and rhetoric of justice and equality for women.

The Report of the Hindu Law Committee observations about the group in worth noting: “The primary aim of most of the alterations in the existing Hindu Law proposed in the draft Code being to effect an improvement in the status of women, it will be useful to state the reception it has met with from them. Almost all women’s associations of standing came out strongly in favour of the Code. Women who confidently claimed to represent the views of the vast majority of their educated sisters heartily welcomed the proposals and only wished that they had gone much further.”^{xxxix}

The gender narrative also included the speeches of women legislators in the Indian political sphere. Consequently, the political sphere also saw notable contributions by women legislators. In Parliamentary debates, the feminist legislators presented a unified and liberal perspective. The major contributors in the debates were Hansa Mehta, Renuka Ray, G. Durgabai, and Sucheta Kripalani. Their speeches in the legislative debates on the Hindu Code Bill clearly brought out the feminist consciousness prevalent among women’s organisations in late colonial India. Hansa Mehta, a legislator from Bombay and an active member of the AIWC, for instance, expressed the feminist viewpoint,

“Disrespect for women and all the atrocities that we hear of perpetrated on women are I think due to the fact that this principle of polygamy exists. If we had monogamy, I do not think that women would have been abducted, married off or other things would have happened to them. This is a very wholesome principle and I hope the House will accept it”.^{xxx}

Sucheta Kripalani, parliamentarian from Delhi and a leader in the Women’s movement in the country observed that much of the controversy over the Hindu Code Bill is clouded by irrelevant issues. She observed,

“We are pledged to give women equal status in society. We are pledged to do away with all sex discrimination and this pledge does not start from the time when we bring into effect the New Constitution. I would like to remind you that in the Karachi resolution these pledges are embodied. After that when we accepted office, then also we again reiterated that there shall be no discrimination on the basis of sex. If men and women are to work equally, if they are to function as equal citizens of the State, if they are to fulfil their obligations towards the state, how can we have such discriminatory rules in the matter of property rights of women? Unless woman gets her full share of property you cannot expect her to fulfil her obligations to the state. Of course whenever we make any changes, established custom and established rules are disturbed. It causes a certain amount of dislocation and inconvenience, but we have to tolerate them and take them as inevitable”^{xxxix}.

G. Durgabai, a parliamentarian from Madras termed the Hindu Code Bill as permissive nature, “They impose no sort of obligation or compulsion on the orthodox section of the Hindus. Their only effect is to give the growing and claimant body of Hindus, men and women, the freedom to live a life which they wish to live without in any way affecting or infringing their liberty to adhere to the old ways”^{xxxii}. Renuka Ray, noted legislator from West Bengal and feminist leader, observed on the floor of

the Parliament that since 1931, there has been an insistent demand throughout the country regarding women's rights, the need for the removal of legal disabilities of women and the need for a uniform and comprehensive code of legislation. As piecemeal legislation was leading to anomalies in law and because of this insistent demand, the Government of that day was forced and compelled to appoint the Hindu Law Committee.

Thus women leaders were not mute spectators to the debate but actively participated in the process of family law formation in India by reinforcing the gender narrative propagated by women's organisations. Presenting a unified view, they gave strength to the liberal perspective and helped in the emergence of feminist consciousness in India.

The Minority Narrative

The debates surrounding gender issues in nineteenth century India can hardly be effectively interpreted without recourse to the dynamics of caste system, a system of social stratification and hierarchy underscored by the existence of endogamous hereditary groups termed as *Varnas* and sub divided into *Jatis*. In India, the caste system assumes special significance for Hindu women due to its influence on the customary practices built around family and society. The system had pervasive influence on Indian society and culture for over two thousand five hundred years, and legitimized the unequal access to resources and power in society. In the twentieth century, two prominent personalities, Mahatma Gandhi and B.R. Ambedkar, played a crucial role in bringing to the fore the injustices done to lower castes by upper castes. While Gandhiji made the removal of untouchability a part of the national liberation campaign, Ambedkar, belonging to the *Mahar* community, organised campaigns in removing caste injustices, calling himself “ breaker of the pride of twice-born classes”^{xxxiii}. Under the leadership of Ambedkar, the Mahars organised an autonomous movement from the 1920s, demanding separate representation, the right to use tanks and enter temples. They also demanded the abolition of 'mahar watan', a customary practice that forced them to give traditional services to village chiefs^{xxxiv}. The demands for ending caste based discriminations were also recognised in the Constitution of Independent India, Ambedkar playing a central role in the framing of the Constitution.

Ambedkar championed the minority narrative during the Hindu Code Bill debate. To the orthodox, his background of the Mahar caste was enough to create apprehensions towards him and his efforts to reform Hindu Law. The zeal of Ambedkar was interpreted as a crusade against upper caste bastions and a continuation of his efforts to criticize numerous deficiencies in Hindu socio-religious practices in many of his well researched writings^{xxxv}. As the debate on the Hindu Code Bill progressed, it was anti-Ambedkarism, which began to affect its passage. Such was the intensity of the opposition to Ambedkar that Nehru thought of reshuffling the Cabinet and put in place a more congenial Law Minister.^{xxxvi} In fact, during 1955 and 1956, when the Hindu Code Bill was enacted in fragments, Ambedkar's absence has been cited as a reason for the smooth passage of the Bill^{xxxvii}.

Indeed, the eagerness with which Ambedkar tried to push through the Hindu Code Bill was remarkable, so much so, that the Hindu Code Bill became intrinsically

associated with his name. Ambedkar has gone on record as saying that he considered his work on the Hindu Code Bill to be as important as his participation in the formulation of the Indian Constitution. Ambedkar insisted that it was not sufficient to recognise the right to political and economic equality in a 'secular' space defined in the Constitution, as long as inequalities among citizens, especially and particularly on the basis of caste, continued to be entrenched in the religious life of the Hindu majority. He saw the Hindu Code Bill as a basis for the reform of Hindu society. As Law Minister in the Constituent Assembly, Ambedkar presented the minority rhetoric:

“To leave inequality between class and class, between sex and sex which is the soul of Hindu society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap”^{xxxviii}.

Such strong remarks on deficiencies of the Hindu society and religion were bound to invite backlash from the puritans and traditionalists. As Duncan M. Derrett observed, “A number of pamphlets were written against the Code. Attention was drawn to the qualifications and social origin of the Third Draft's virtual author”^{xxxix}. He was called the second Manu, and, his caste affiliations were often the centre of criticism of upper caste Hindus who opposed the Bill^{xl}. With the support of women legislators, Ambedkar's fight for the Hindu Code Bill was essentially a fight from within, to ensure social justice from within the legislature.

Section 3

Rhetoric, Reason and Representation

Any legal historian researching the period of 1941 to 1946 cannot but be overwhelmed by the abundance of evidence and the diversity of rhetoric on the discourse surrounding the reform of Hindu family laws. This paper focuses on the interplay of three broad forces in Indian society that determined the journey from legal narratives to enactment of family laws.

The first aspect, the diversity of rhetoric, has been extensively discussed in Section 2 in the context of multiplicity of narratives. Ever since the Hindu Law Committee set out to create a progressive Hindu Code keeping the social consensus in mind, a diversity of communicative channels emerged to influence the outcome of such legal initiative. Written submissions to the committee, writings in newspapers and journals, influencing public opinion through meetings and religious congegations, conferences of women's organisations and social groups were all part of an overwhelmingly diverse narrative. Society was divided like never before, from families to political parties, multiplicity of opinions came to reflect the changing Indian psyche. The conservatives held on to its influence in society, trying every means to scuttle the Bill. The liberal narrative, on the other hand, appealed to modern notions of reason and freedom in society and was championed by a segment of India's elite and a substantial portion of Indian women, who were unifying there voices through pan Indian women's associations. All kinds of rhetorical devices of legal narratives were used in the course of this protracted discourse— such as the desire/attempt of

persuasion, threats, argumentations to bargain power, use of storytelling and dramatization in the reasoning approaches (Anderson and Bruner, 2012).

In the end, the power of representation and strategic positioning of those attempting to influence the formative process of law became a critical factor in a democratic style of decision making. The early legislative processes failed to lead the Bill to enactment as widespread representation of orthodoxy in the legislature and the division in the liberal Congress party hindered the passage of the Bill. Post 1952 elections, with Nehru with majority support, and the India firmly on the path of modernization, could reason his way through towards the enactment of family laws. Evidently, Indian social consciousness at the onset of Independence was one of hope and aspiration to build a modern nation, and the society used the rationale of modernity in putting its weight behind the progressive legislations. Sizeable social support including support from women, coupled with adequate representation in legislature enabled Nehru to implement the family law reforms..

In retrospect, the process of enactment of Hindu Code Bill turned out to be an interplay of rhetoric, reason and power. All three factors mattered, the rhetoric was important in making the argument heard and debated and to enhance the ability to push socio-cultural ideologies forward. The emerging Indian democracy was receptive and tolerant enough to absorb diversity of viewpoints and hence to the society. At the same time, use of reason was of paramount importance and, as a tool, rhetoric had little alternative but to pay heed to reason. The ability of reason to influence social narrative is a trait embedded in the Indian tradition^{xli} as aptly demonstrated in Amartya Sen's seminal work *The Argumentative Indian*. Thus, appeal to reason led to strengthening of arguments which gave legitimacy to the narratives and their relative influence in the legislative process. Finally, power through representation was influential in transforming the ideas into enacted laws. Moreover, the narratives, being debated extensively in Indian society, influenced Indian rationality even at the formative stages of law. Therefore, a complex interplay of rhetoric, reason and representation influenced the process of law formation in India during the 1940s and 1950s.

Application of a narrative based technique in legal history leads to a reassessment of the significance of Hindu Code Bill debates of 1940s and 1950s from a historian's perspective. The analysis of alternate narratives places the historical significance of the Hindu Code Bill not merely in terms of its legal provisions or implementation of the Acts, but also in terms of its impact in the realm of gender consciousness in society. The extended discourse over the Hindu Code Bill led to progression of social consciousness regarding woman's role in family and society. The laws of 1954-56 transformed Indian society not just through the efficacy of their immediate implementation process, but also through the influence on gender perceptions in society. Thus, although the legal provisions of Indian family law reform of 1950s was of enormous significance, one cannot discount the influence of narratives either. The Bill got discussed extensively in India and the discourse served to stir Indian social and gender consciousness. In the process of debating, alternate narratives came to be extensively debated, creating in the process the new gender narrative of modern India. Shaped by socio-cultural and historical forces, the interplay of narratives in the process of Hindu Code Bill debate propelled the Indian society forward. As new voices in support of gender rights began to emerge in independent India, the four

pillars of family law stood as benchmarks, and the society engaged in debates where debates became “much more cogent after the passing of the Code”, mainly because the Code stood tall as the only authoritative statement of the Hindu law had nowhere else to look to for support but itself.^{xlii}. Thus, the formation and interplay of narratives of the family law formation process was of great significance in shaping the modern Indian society along with enacted laws. As Brooks (2005) has contended citing western experience of legal narratives, the role of narratives in legal history remains of primary importance. In a similar vein, it can be stated that the debates surrounding the Hindu Code played a central role in shaping Indian socio-legal history. However, in literature on Indian legal history, the interplay of narratives surrounding the Hindu Code Bill continues to be under-represented, as a review of literature on Hindu Code Bill would suggest.^{xliii} To this end, this paper is a modest effort in assimilating legal narratives in historical analysis.

Endnotes

ⁱ J.D.M. Derrett, *Hindu Law: Past and Present*, p. 55.

ⁱⁱ AIWC, *Annual Report*, 1934, p. 45. This stand was reiterated by the AIWC in their annual session in 1941.(AIWC , *Annual Report*,1941,p. 36).

ⁱⁱⁱ *Report of the Hindu Law Committee*, Government Press, Madras, p. 6.

^{iv} *ibid.*, p. 1 .

^v *ibid.*, p. 23.

^{vi} *Ibid.*, p. 1.

^{vii} *ibid.*, p. 3.

^{viii} *ibid.*, p. 3.

^{ix} *ibid.*, p. 4.

^x Jawaharlal Nehru, *Letters to Chief Ministers 1947-64*, Volume IV, June 15, 1956.

^{xi} J.D.M. Derrett, *op.cit.*, p. 269.

^{xii} , Termed variously as *kula* (family or tribe), *shreni* (artisan's guilds) and *puga* or *gana* (assembly or association).

^{xiii} Report of the Hindu Law Committee, p.62.

^{xiv} *Ibid.*, page 146.

^{xv} *Ibid.* page 414.

^{xvi} Written Evidence Submitted to the Hindu law Committee, Volume 1, page 86.

^{xvii} *Ibid.*, page 150.

^{xviii} *Ibid.*, page 152.

^{xix} Written Evidence Submitted to the Hindu Law Committee, Volume II, page 347.

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- ^{xx} *Constituent Assembly of India (Legislative) Debates*, Volume II, Part II, February 25, 1949, p. 912.
- ^{xxi} Judith Brown, *Gandhi - Prisoner of Hope*, Oxford University Press, 1992, p. 208.
- ^{xxii} Pushpa Joshi, *Gandhi on Women*, Centre for Women's Development Studies, 1988, pp. 17-18.
- ^{xxiii} 'Reba Som, 'Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?', in *Modern Asian Studies*, Volume 28, No 1, 1994, pp. 165-194.
- ^{xxiv} Geraldine Forbes, 'The Politics of Respectability: Indian Women and the Indian National Congress', in D.A. Low (ed.) *The Indian National Congress: Centenary Hindsight*, Oxford University Press, New Delhi, 1988.
- ^{xxv} *ibid*, Section 7, p. 4.
- ^{xxvi} *ibid.*, Section 8, p.4.
- ^{xxvii} Margaret..E. Cousins, *Indian Womanhood Today*, p. 30.
- ^{xxviii} *Ibid.* , p.36.
- ^{xxix} Report of the Hindu Law Committee, 1947, p.6.
- ^{xxx} *Constituent Assembly of India (Legislative) Debates*, Volume IV, April 9, 1948, p. 3644.
- ^{xxxi} *Constituent Assembly of India (Legislative) Debates*, Volume II, Part II, March 1, 1949, p. 898.
- ^{xxxii} *Constituent Assembly of India (Legislative) Debates*, Volume II, Part II, March 1, 1949, p. 991.
- ^{xxxiii} John Duncan M. Derrett, *Hindu Law : Past and Present*, A.Mukhejee and Co., 1957, p. 70.
- ^{xxxiv} Sumit Sarkar, *Modern India 1885-1947*, Macmillan India Limited, New Delhi, seventh edition, 1990, p. 242.
- ^{xxxv} See, for instance, Valentine Rodrigues (ed), *The Essential Writings of B.R.Ambedkar*, Chapters 2,10,12,19,20, 27 and 28.
- ^{xxxvi} Dhananjay Keer, *Dr. Ambedkar: Life and Mission*, Popular Prakashan, Bombay, 1971, p.426.
- ^{xxxvii} Reba Som, *op.cit*, p. 188. Of course, some parliamentarians felt that the most important reason was that the controversial clauses were already removed from the Bill, and there was nothing to object (See speech by Sardar Hukum Singh, *Lok Sabha Debates*, Volume V, Part II, pp.7253-54).
- ^{xxxviii} Resignation Statement of Dr. B.R. Ambedkar, Ambedkar, B.R., Writings and Speeches, compiled by V.S.Moon, Education Department, Government of Maharashtra, Mumbai, Volume 14, Part II, 1989, p. 1131. .
- ^{xxxix} Duncan M.Derrett, *The Hindu Law:Past and Present*, A. Mukherjee, 1957, p.70.
- ^{xl} *ibid.*, p. 71.
- ^{xli} The tradition of argumentation and application of rational thinking is a trait embedded in the indian tradition as explained in Amartya Sen's seminal work, *The Argumentative Indian* .

^{xlii} *ibid.*, pp. 269.

^{xliii} See Sinha, Chitra, *Debating Patriarchy: The Hindu Code Bill Controversy in India (1941-56)*, Chapter 7 for an overview of existing literature.

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